1952

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (H-8), intituled:
An Act respecting the Criminal Law.

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JUNE 11, 1952

APPENDICES

"A" Clauses where corroboration is now required and where the requirement of corroboration has been dropped, replaced or added.

"B" Disposition of Sections of the Criminal Code in the Bill.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine	Gershaw	McGuire
Baird	Gouin	McIntyre
Beaubien	*Haig	McKeen
Bouffard	Hardy	McLean
Buchanan	Hawkins	Nicol
Burchill	Hayden	Paterson
Campbell	Horner	Pirie
Crerar	Howard	Pratt
Daigle	Howden	Quinn
David	Hugessen	Raymond
Davies	King	*Robertson
Dessureault	Kinley	Roebuck
Emmerson	Lambert	Taylor
Euler	MacKinnon	Vaillancourt
Fallis	MacLennan	Vien
Farris	Marcotte	Wilson
Fogo	McDonald	Wood

* *ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 15th May, 1952.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion for the second reading of the Bill (H-8), intituled: "An Act respecting the Criminal Law".

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

After further debate, it was—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 11, 1952.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.15 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Beaubien, Davies, Dessureault, Emmerson, Farris, Fogo, Gouin, Howard, McDonald, McIntyre, Robertson, Vaillancourt, Vien and Wilson. 15.

Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, and the official reporters of the Senate, were in attendance.

The Chairman presented to the Committee an interim report of the sub-committee appointed to consider Bill H-8, intituled: "An Act respecting the Criminal Law".

It was ordered that the interim Report be incorporated in the printed proceedings of the Committee.

At 6.15 p.m. the committee adjourned to the call of the chairman.

Attest.

JAMES D. MACDONALD,
Clerk of the Committee.

59664—1½

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, June 11, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill H-8, an Act respecting the Criminal Law, met this day at 4.30 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, some weeks ago when the Criminal Code came before us we tried our hand at it in committee for half a day, and we did not get very far. Then we appointed a subcommittee, and this subcommittee has been sitting fairly steadily in the interim, and it was felt at this time, as the session is getting to a close, that we should make an interim report on the work that we have done. That is the purpose for calling together the general committee today. When the subcommittee started in on this work it was provided with a number of lists. We were provided with a list prepared by the Department of Justice purporting to be a list of the sections in the bill incorporated without any change other than a change in form from the present Code; then a second list purporting to relate to the sections in the bill which were brought in from the Code, but in respect of which there were changes not only in form but in substance. Then we had a third list of sections which were dropped, and we had a fourth list of what we called "New Sections Added". Now, then, when we got that material in the first place it was incomplete, and it was only a week ago that we got the balance of the lists brought right down to section 748, which is the last section in the bill.

When we started out in committee we took a run at the first 124 sections in the bill, just to see what procedure we should follow, and to make a check on these various lists that were given to us. In the course of the first 124 sections we ran into sections which were in our list as having been changed in substance, and into sections which were in our list as having been changed in form, but not changed in substance and we ran into some new sections. We found in connection with some of the sections where our list had been changed in form only, that they had been changed in substance as well. So we immediately concluded that if we were going to do a proper job in dealing with the Criminal Code, that ultimately we would have to examine every section of the bill. Now, that is a terrific job, so we decided next to deal first with the list containing the sections sought to be changed in substance as well as in form, and we have covered that list to the extent of the original list supplied us. We have not as yet dealt with the list supplied us a few days ago.

During part of our hearings as a subcommittee we had officials from the Department of Justice sitting in with us, and we discussed these sections with them. You can understand how laborious it was because the bill is not annotated, and therefore we had to open up the bill, consider a section, open up the Code, look at the section from which it was taken, and then look at these lists to see what categories they came under and then ultimately we got hold of an annotation—which was prepared for the purposes of the Minister—of the sections of the bill, giving some reasons in some of the cases why the changes were made or why a section was dropped or why a new section was added. This annotation is just a simple-sized document like this, as you can see, of about 160 pages. When we got this annotation we were able to move a little more quickly on some of the sections because we got some idea of the reasons impelling them to make the changes.

There seemed to be some pressure about getting this Code into the Senate and out of committee and over to the Commons for them to deal with it this year. As we applied ourselves to this job we felt more and more convinced that it was impossible for us to give proper consideration to this, and to finish it in time for any accepted conclusion of the sittings of the house this session. As a result of that, we had several sessions with the minister. First of all the members of the subcommittee, together with the leader, went over and had a session with Mr. Garson. We pointed out to him some of the difficulties which we were running into, and the revisions we had to make, as a result of which we felt we could not do a good job unless we took the time and examined every section. In order to make doubly sure I went back to see the Minister the next day, because there seemed to be a feeling in some quarters, as it was communicated to me, that if we were to apply ourselves diligently we could do this job within a reasonable time. I went back and dispelled that notion, and his final answer to me as Chairman of the subcommittee was that what he wanted first was a good bill, the best he could get, and secondly, that if that required carrying over from this session, then that was all right as far as he was concerned. The first thing he wanted was to be able to tell the House of Commons that it was the best bill that could be drawn, and that it carried the best judgment of the Senate. We told him very strongly that we were not prepared to put our recommendation on anything that we had not looked at in the light of what we had found when we checked the various sections. That is the background of the report which you have before you.

I think this report should be incorporated into the Minutes of our Proceedings today. There are some appendices referred to, which may also be printed, because in that way the House of Commons will have available the work that has been done. We have not finalized all the sections. As a matter of fact we have left a number of them for the consideration of this main committee. With this in mind, possibly the best procedure would be to read this report. It will not take very long, even though it may look formidable, and explain some of the things we ran into so that you will appreciate some of the difficulties we encountered. It is proposed that we shall continue, within the limits of our time, to review additional sections of the Code, but so far as this subcommittee is concerned we are satisfied now that it is just physically impossible to do this job in time for consideration by the Commons at this session. The report reads:

Your subcommittee was appointed by resolution of the 20th day of May, 1952, and consisted of the following members of the Committee appointed by the Chairman pursuant to the said resolution:—

The Honourable Senators:—Bouffard, Hayden, Farris, Hugessen, Fogo, Roebuck, Haig, Vien, *Robertson.

The members of your subcommittee have individually given considerable study to the bill in detail and have held several sittings of the subcommittee at which officers of the Department of Justice were present and have given explanations of some of the changes made by the bill in the Criminal law as at present existing under the Criminal Code.

The lack of satisfactory explanatory notes appended to the bill has made the task of your subcommittee most tedious and difficult, and has delayed the Committee's progress. A great deal of time has been spent checking the clauses of the new bill as against the corresponding sections of the present Criminal Code.

The bill would enact what would be in many respects a new Criminal law for Canada. It proposes many changes in the law which call for most serious and thoughtful consideration by members of the Senate and House of Commons who are under our constitution responsible for the enactment of the Criminal law.

* Ex officio member.

In the course of its work on Bill H8, your subcommittee has considered the report of the Royal Commission on the Revision of the Criminal Code, submitted to the Minister of Justice on February 22nd, 1952, and noted the observations contained therein. We have been impressed by the work done by the Commission and feel that it has made a valuable contribution to the study of Criminal law.

Your subcommittee notes, however, the concluding paragraph of the said report which reads as follows:—

> Your Commissioners desire to state that as to some of the provisions of the draft bill there was a difference of opinion. While the draft bill presented reflects in some respects the view of the majority only, no useful purpose can be served by indicating specifically the matters in which differences of opinion were not fully resolved.

While your subcommittee is of the opinion that members of Parliament must always seriously study legislation, it feels that, in view of the paragraph quoted in the Commissioner's Report, it must examine this bill most carefully and take the time necessary to consider thoroughly the many alterations in the present law which it proposes.

Your subcommittee discussed some features of the bill with the Minister of Justice who agreed that the bill should not be dealt with hastily, for as he said "I want to have a job done thoroughly; I want the best possible law to be the final result of your efforts."

During the course of our examination of the bill, we secured from the officials of the Department of Justice several explanatory memoranda, giving in some cases the reasons for changes made in the present law. The memoranda are appended to this report and we recommend that they be printed in the proceedings of the main Committee for the information of the members of the Senate and of the House of Commons. The labours of your subcommittee members would have been considerably lightened and more progress could have been made if these and other notes had been printed with the bill when it was originally submitted to Parliament.

We are of the opinion that, when important measures are submitted to Parliament, the fullest possible explanations should be printed opposite the clauses of a bill, to enable members of both Houses to appreciate readily their effect and the reasons for their enactment. It is impossible for members with limited time and research facilities to deal satisfactorily with complicated legislative measures without full explanations readily available by those responsible for the drafting of the legislation.

Your subcommittee, at the beginning of its work, considered the clauses of the bill in numerical order but, after considering the first 124 clauses, realized how much time had been expended in comparing proposed clauses with the relevant sections of the present Code, and how long it would take to so complete the full 748 clauses of the bill. The attending officials were asked to prepare a memorandum showing the clauses in which substantive changes had been made in the law, and so from clause 124 on the subcommittee has dealt with the clauses which the officials considered embodied substantial alterations in the law now in force, leaving for later consideration the remainder of the bill.

The CHAIRMAN: You will recall we dealt with the definition section, and I think it took us several hours to deal with about forty-four definitions that were in the definitions section. We have incorporated here the changes which we made in that section.

Hon. Mr. DAVIES: In all cases of contempt of court?

The CHAIRMAN: Yes. I might just pause for a moment. There is no provision for appeal from contempt of court proceedings—the decision of the judge who determines that there has been contempt and imposes a penalty, is final and the feeling of the committee was that there should be an appeal.

Hon. Mr. DAVIES: Has there not been an appeal in the case of the Windsor "Star"?

The CHAIRMAN: I have been wondering as much as you have how they hope to carry their appeal.

Hon. Mr. DAVIES: They were fined $1,000 and $100, and they have appealed.

Hon. Mr. ROEBUCK: I don't know how they have appealed. There is no appeal given.

Hon. Mr. DAVIES: They are reported in the press to have appealed the case.

Hon. Mr. ROEBUCK: There is no appeal in the civil law that I know of. There has been much comment on arbitrary powers exercised by a judge to call somebody before him in court and be judge, jury, executioner—all combined. He levies the fine, if it is a fine, or imposes imprisonment; and that is that.

The CHAIRMAN: We felt that that was an important question, but it was not one on which the subcommittee thought it should make the final decision. We have expressed our views to this general committee; that is, we think there should be an appeal in such cases to the appropriate appellate court. It is up to the main body of the committee to decide (i) whether there should be an appeal, and (ii) the extent and the circumstances and conditions under which an appeal should be given. It may be that, having raised the question, we could consider the rest of the report and then you could make your decision. Possibly that would be the better way to deal with it. Do you think we should deal with these matters as we go along, or go through the whole report and then come back and deal with them?

Hon. Mr. VIEN: Can I have a copy of the report? I am a member of the subcommittee.

The CHAIRMAN: Well, we have so referred to you.

Hon. Mr. VIEN: Why cannot we have enough of these things to go around?

The CHAIRMAN: Because we did not have time to prepare them.

Hon. Mr. VIEN: It is not reasonable that the committee should have to deal with the report before having a copy of the report before them.

The CHAIRMAN: It will be printed in the proceedings of today.

Hon. Mr. VIEN: Well, then, is there any very great urgency?

The CHAIRMAN: Not to deal with it, but there is urgency in reporting to the general committee the work that has been done.

Hon. Mr. VIEN: That is what we are doing now?

The CHAIRMAN: That is what we are doing now.

Hon. Mr. ROEBUCK: I suggest we go ahead and read the report and not attempt to deal with it in detail as we go along. Then perhaps we will have time to go over it and pass it or deal with it one way or the other. But the important thing this afternoon is to get it on record and give the members of the committee some notice of what the problems are, and then perhaps they may send us back to continue our work.

Hon. Mr. VIEN: But I understand that the Prime Minister has announced that this bill will not be passed at this session.

Hon. Mr. ROEBUCK: Oh, no, he did not go so far as that. Pardon me; you may be better informed than I am; but I read in the papers that he said that unless the bill was reported by us two weeks prior to the date of prorogation it would not be dealt with this session. You may be perfectly sure that we will not report this within two weeks of the end of the session.

Hon. Mr. VIEN: Then would it not be preferable to have this subcommittee's report printed and distributed and taken into account by this committee next week?

The CHAIRMAN: That is exactly what we are doing, only we think that we could not just hand this report to the *Hansard* reporter and tell him to write up a set of minutes of the meeting of the general committee; we felt we had to gather the committee and present the report to them, and whatever comment there is in the course of the meeting can go in the record. Then everybody will have a copy of the printed record to study by himself.

Hon. Mr. VIEN: When this report goes to the House of Commons, do they then appoint a committee to go over it all again?

The CHAIRMAN: They can.

Hon. Mr. VIEN: They have to.

Hon. Mr. ROBERTSON: Up to the moment this is a report of the subcommittee.

The CHAIRMAN: The bill was introduced in the Senate. It still will have to be dealt with in committee by the Commons.

Hon. Mr. ROEBUCK: That all depends. It might go to committee in the Commons and it might not. It is government legislation.

Hon. Mr. VIEN: A bill of this importance could not be dealt with by the house without being referred to a special committee or a standing committee.

The CHAIRMAN: Well, that is their problem when they get it. We have enough problems of our own in dealing with this.

Hon. Mr. ROEBUCK: I suggest the Chairman proceed.

The CHAIRMAN: (reading):

Clauses 1 and 2 of the bill were amended in the Main Committee and agreed to as amended:—

Page 3, line 47: Delete "or" and substitute "and".

Page 4, lines 35 to 39, both inclusive: Delete sub-clause (25) and substitute:

> (25) 'motor vehicle' means a vehicle that is drawn, propelled or driven by any means other than by muscular power but does not include a vehicle of a railway that operates on rails:

Your subcommittee took over at this point, and has dealt with the following clauses of the bill as set out hereunder:—

Clauses 3, 4, 5, 6 and 7 were passed.

Clause 8 stands for consideration of the whole Committee. The subcommittee understands that the summary power of punishment for contempt of court has been given to courts to prevent any attempt to interfere with the administration of justice and that it is primarily for the protection of the public. Nevertheless it is felt that there should be an appeal in such cases to the appropriate appellate courts.

Clauses 9 to 38 inclusive, are passed. Clause 15 on page 10—should be reconsidered. De facto law is made a complete defence and it was pointed out would have protected Riel in the west and Mackenzie on Navy Island. The need for such an enactment is open to question.

Clause 39, page 17, line 8: After "or" insert "does not"—clause as amended, passed.

Clause 40—passed.

Clauses 41 and 42. We recommend changes as follows:—

Page 17, line 20: Delete "land" and substitute "real property".
Page 17, line 23: Delete "land" and substitute "real property".
Page 17, line 26: Delete "land" and substitute "real property".
Page 17, line 31: Delete "land" and substitute "real property".
Page 17, line 36: Delete "land" and substitute "real property".
Page 17, line 38: Delete "land" and substitute "real property".
Page 17, line 47: Delete "land" and substitute "real property".
Page 18, line 2: Delete "land" and substitute "real property".

Clause 43, amended as follows:—

Page 18, line 9: Delete "master".
Page 18, line 11: Delete "apprentice".

This clause protects persons in authority when inflicting punishment, such as school teachers, parents, etc. We recommend deletions above mentioned as obsolete.

Hon. Mr. ROEBUCK: It gives the master or officer in command of a vessel on a voyage the power to strike an apprentice, just as a school teacher does a child.

The CHAIRMAN: Yes.

Clauses 44 and 45. Passed.

Clauses 46 to 50, both inclusive, which deal with treason and treasonable offences are to stand for consideration by the Main Committee together with clause 55.

The CHAIRMAN: We felt that this was a very important section. I omitted to state earlier that we have received a considerable number of briefs from various organizations in Canada. Since this is being reported verbatim I shall make no other comment about it, other than to say that this is one of the subjects they raised for discussion—the offence of treason as contained in the Code at the present time.

Hon. Mr. VIEN: Has the subcommittee any recommendation?

The CHAIRMAN: We have certain recommendations to make in this regard, but we thought it would be advisable to make them later.

Hon. Mr. ROEBUCK: When we come to discuss it later we shall have opinions to express and recommendations to make.

Clauses 51, 52, 53 and 54. Passed.

Clause 56. Passed.

Clause 57 is to stand for consideration of the Main Committee.

The CHAIRMAN: This clause deals with offences in relation to members of the R.C.M. Police. Generally the section sought to place the R.C.M. Police on the same basis as members of the military forces, and we felt that this should be reflected upon and considered further. We did not feel that the R.C.M. Police should be regarded in the same position as the members of the armed forces.

Hon. Mr. ROEBUCK: It is a civilian organization and not a military organization.

The CHAIRMAN: Yes.

Clauses 58 to 61, both inclusive. Passed.

Clause 62 is to stand for consideration by the Main Committee.

Clause 63 is to stand for consideration by the Main Committee.

This clause 63 deals with offences in relation to military forces and the R.C.M.P.

The CHAIRMAN: The reason for having this clause 63 stand for the consideration of the Main Committee was that it is a question of policy. We think

the Main Committee should decide whether they are going to group the members of the military forces and of the R.C.M.Police in relation to these offences, or whether they are going to consider the R.C.M. Police as a civilian organization to be put on a different level from the military.

Clauses 64 to 71, both inclusive. Passed.

Clause 72. We recommend that it be deleted as being archaic. In the event of our suggestion being approved, clause 73 should be divided into two clauses to preserve subsequent numbering of clauses.

Hon. Mr. ROEBUCK: Clause 72 deals with duelling. According to the bill any person who challenges or attempts by any means to provoke another person to fight a duel, or attempts to provoke a person to challenge another person to fight a duel, is guilty of an indictable offence and is liable to imprisonment for two years.

The CHAIRMAN: Yes, a duel under the bill is not made an offence, but if you provoke some person to a duel or if you attempt to provoke a person to challenge another person to fight a duel, that is an offence. We thought that this did not make sense, and we suggest it be struck out.

Hon. Mr. DAVIES: The whole clause?

The CHAIRMAN: Yes, the clause dealing with any person who challenges or attempts by any means to provoke another person to fight a duel, or attempts to provoke a person to challenge another person to fight a duel. We think it is archaic.

Hon. Mr. VIEN: Even though it is archaic it may be well to leave it in the Act. I think a duel should remain a criminal offence.

The CHAIRMAN: Duels are not criminal offences, but the act of provoking a duel is a criminal offence. That does not seem to make sense to us, but that is a matter for the Main Committee to decide later. We have made our recommendation.

Hon. Mr. ROEBUCK: It should be pointed out too that a duel may be attempted murder. It is certainly a breach of the peace. It is an assault, and it is covered in other sections of the Code.

Hon. Mr. VIEN: Why should it not be a criminal offence to provoke a person to fight a duel? Why should it not be a criminal offence? We do not wish to return to the ages when a duel was considered to be a noble gesture.

Hon. Mr. FOGO: If this is to be discussed later, perhaps we could save time by moving along now.

Hon. Mr. VIEN: Yes.

The CHAIRMAN (Reading):

Clauses 73 to 75, both inclusive. Passed.

Clause 76 is to be redrafted to read as follows:

Page 26, delete lines 33 to 37, both inclusive, and substitute:

76. Every one who, while in or out of Canada,

(*a*) steals a Canadian ship, or

(*b*) steals, or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Canadian ship,

Hon. Mr. ROEBUCK: This has not changed the substance of the clause in the bill, but it has made a clumsy expression into a more businesslike expression.

The CHAIRMAN (Reading):

Clauses 77 to 80, both inclusive, are to stand for redrafting and discussion of the policy of the law in the Main Committee. Redraft of the clauses is submitted for purposes of discussion, as follows:

77. Every one who unlawfully

(*a*) causes an explosion of an explosive substance that does bodily harm to any person, or

(*b*) causes an explosion of an explosive substance that is likely to endanger life or to cause serious damage to property, whether or not life is endangered or property is damaged thereby,

is guilty of an indictable offence and is liable to imprisonment for life.

Hon. Mr. ROEBUCK: I am not satisfied with this clause even as it has been redrafted. It does not satisfy the objections made in the subcommittee. For instance, what about mining people who are using explosives all the time? Then there are explosives used in construction work on streets, and used in vast quantities to dig canals for hydro-electric power. Here we say, "Everyone who unlawfully causes an explosion . . .". That is to say, if he did not have a licence to use explosives and is likely to endanger life, it constitutes an indictable offence and he is liable to be imprisoned for life. What is hit at, of course, is such an action as that of the MacNamara's when they blew up the Times Building in Los Angeles.

Hon. Mr. FOGO: Bombs.

The CHAIRMAN (Reading):

78. Every one who

(*a*) with intent to do bodily harm to any person,

(i) causes an explosive substance to explode,

(ii) sends or delivers to a person or causes a person to take or receive an explosive substance or other dangerous substance or thing, or

(iii) places or throws anywhere or at or upon a person a corrosive fluid, explosive substance or any other dangerous substance or thing; or

(*b*) wilfully does anything to cause an explosion of an explosive substance that is likely to endanger life,

(*c*) makes or has in his possession or under his control an explosive substance with intent thereby to endanger life or to enable another person thereby to endanger life,

is guilty of an indictable offence and is liable to imprisonment for life.

79. Every one who

(*a*) with intent to destroy or damage property, places or throws an explosive substance anywhere,

(*b*) does anything with intent to cause an explosion of an explosive substance that is likely to cause serious damage to property, or

(*c*) makes or has in his possession or under his control an explosive substance with intent thereby

(i) to cause serious damage to property, or

(ii) to enable another person thereby to cause serious damage to property,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Clause 80. This clause stands for consideration of the Main Committee.

The CHAIRMAN: This deals with persons possessing explosives without lawful excuse.

Clauses 81 to 89, both inclusive. Passed.

Clause 90. This clause stands for discussion in the Main Committee. We are of opinion that as worded in the bill it is too sweeping as motor vehicle

has been defined and that the obligation on the accused is oppressive and unjust. The following redraft of subclause (3) has been prepared for purposes of discussion:

> 90. (3) Every one who is an occupant of a motor vehicle in which he knows there is a firearm commits an offence unless some occupant of the motor vehicle has a valid permit in Form 42 or Form 44 relating to that firearm, but no person shall be convicted of an offence under this subsection where he establishes that he had no reasonable means of ascertaining whether an occupant of the motor vehicle had a valid permit relating to the firearm.

The CHAIRMAN: As it was drawn there was not that protection in it at all, and we have recommended this change.

Hon. Mr. DAVIES: What did they say about that permit?

The CHAIRMAN: This is the redraft we have made.
The original section 90, subsection (3) simply said:

> Every one who is an occupant of a motor vehicle in which he knows there is a firearm commits an offence unless some occupant of the motor vehicle has a valid permit in Form 42 or Form 44 relating to that firearm.

We have felt there should be some basis of knowledge. What ability or opportunity did the occupant of the motor-car have to know that there was a permit? There might be a firearm in the glove compartment of the car, and if you sat in the car, unless you catechized the person when you got in the car and said, "Mister, is there a gun in this car, and if so, have you a permit?" you might be liable. That was the way the law was drafted, and the only way you could protect yourself. So we have drafted this to make it more reasonable.

Hon. Mr. EMMERSON: Does that mean a permit is necessary to carry a gun?

The CHAIRMAN: Yes.

Hon. Mr. EMMERSON: What about an ordinary hunting licence? Is that a permit to carry a gun in a car?

The CHAIRMAN: Your hunting permit is a permit to hunt.

Mr. MACNEILL: This is a firearm as defined for the purpose of the Code.

Hon. Mr. MCINTYRE: Does that include anybody who goes out for sport and has a gun of his own? Can he not take that without a permit?

The CHAIRMAN: No, this section does not deal with that. This section deals with an attempt to create a series of offences in relation to unregistered firearms; and the police apparently have difficulties at times: there will be firearms in a car and no person owns them or knows anything about them. So they were attempting to make it an offence that "Every occupant of a motor-car in which he knows there is a firearm commits an offence unless there is a permit". We felt that that is too sweeping, so we have cut it down in section 3 by saying that no person shall be convicted of an offence under this subsection where he establishes that he had no reasonable means of ascertaining whether an occupant of the motor vehicle had a valid permit relating to the firearm.

Hon. Mr. DAVIES: But would he not have a means of ascertaining? In the majority of cases where you think there would be a gun carried in the car you would be suspicious. I mean, anybody might carry a gun in the glove compartment of a car, but it would be very seldom that a law-abiding citizen would do so.

The CHAIRMAN: Without such a change as we have made, in order to protect myself I would have to say to the man, "Have you a valid permit?" if I saw a gun there, and if he did not answer me I would have to get out of the car right away, otherwise I would be guilty of an offence.

Hon. Mr. ROEBUCK: The purpose of the legislation was to help the police in the case of these bandits who are picked up and firearms are found in their motor-car, but nobody admits ownership. In order to get over that difficulty they make a sweeping provision of this kind. The result is that if you get into a motor-bus or into a railroad train—I think railroads are included here—and you see a gun, you had better get out just as fast as you can, or else go around and find out whether there was a permit for that gun—which of course you could not do.

The CHAIRMAN: A "firearm" is defined as meaning a pistol, revolver, or firearm that is capable of firing bullets in repeated succession during one pressure of the trigger; so you can say it is limited to a certain type and situation. A hunting rifle would not come in that category.

Hon. Mr. FOGO: An automatic shot-gun or an automatic rifle.

The CHAIRMAN: Yes.

Hon. Mr. EMMERSON: There are no guns made with one pressure of the trigger. There used to be one, but I don't think there is now.

The CHAIRMAN: (Reading)

Clauses 91 to 103, both inclusive. Passed. The way I use the word "pass" only means that we pass them. The general committee is entitled to review any of this.

Clause 104 is amended as follows:—
Page 38, line 4, after "deceit" insert "unlawful"
Page 38, line 5, after "other" insert "unlawful".

The clause as it appears in the bill would prohibit any influencing by perfectly lawful means.

This clause deals with municipal corruption.

The subsection reads:

> "Every one who by threats, deceit, suppression of the truth or other means, influences or attempts to influence a municipal official to do anything mentioned in paragraphs (*c*) to (*f*) of subsection (1) is guilty of an indictable offence and is liable to imprisonment for two years."

We have suggested that after the word "deceit" in line 4 on page 38 the word "unlawful" be inserted, and that after "other" we insert the word "unlawful". As I have said, the clause as it appears in the bill would prohibit any influencing by perfectly lawful means, so we thought the element of "unlawful" should be inserted before you create an offence of this kind.

Clauses 105 and 106. It was objected that "office" should be defined.

These sections deal with selling and purchasing offices.

Hon. Mr. Roebuck: Anyone who "purports to sell or agrees to sell an appointment to or resignation from an office".

The CHAIRMAN: We don't know what kind of office they are talking about. We thought that "office" should be defined.

Clause 107. Passed. We point out that the offence of disobeying a provincial statute, which is included in the present section 164 of the Code, has been dropped.

That section 164 is the section that provided the sting in the legislation that we passed at a special session when the railways stopped running, a couple of years ago. The meat of that section provided that where no penalty was

otherwise provided in any federal or provincial statute the penalty was—either one or two years, I have forgotten. In the bill they have taken out any reference to a provincial statute. If you have a federal statute which enacts an offence and no penalty is provided in the statute, the penalty will be under section 164. The feeling of the departmental officers and the committee was that when a province passes a statute it should be able to provide its own penalties or have a manifest provision which will show what the particular penalties are when the provincial statute does not say so.

Hon. Mr. ROEBUCK: Most of them do.

The CHAIRMAN: (Reading)

Clause 108. Passed.

Clause 109 is amended as follows:—

Page 39, line 10, delete paragraph (*a*) as "misconduct" is undefined.

What is misconduct?

Section 109 provides:

> Every peace officer or coroner who, being entrusted with the execution of a process, wilfully
> (*a*) misconducts himself in the execution of the process, or
> (*b*) makes a false return to the process, is guilty of an indictable offence and is liable to imprisonment for two years.

We suggest the deletion of paragraph (*a*), because "misconduct" is undefined and we did not know what it meant. We asked the officials, "What does it mean? Give us some kind of an example of that", and they were powerless to give us an example. They said they didn't know what it means and were powerless to give us an example, so it has no business to be there.

Hon. Mr. GOUIN: I would suggest that if his conduct amounts to a criminal offence he would be punishable under the section.

The CHAIRMAN: They have not defined the word "misconduct". The report continues:

Clauses 110 to 116, both inclusive. Passed.

Clause 117. This clause speaks of fabricating evidence for a proposed proceeding. It is a question whether anything is evidence until it is used as such, and the subcommittee amended the clause to read:

> 117. Every one who with intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, by any means other than perjury or incitement to perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Hon. Mr. DAVIES: How would that work?

The CHAIRMAN: The wording of the paragraph as set out in the Code is this:

"Every one who, with intent to mislead, fabricates evidence for the purpose of a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years."

Hon. Mr. DAVIES: Do you mean physically fabricating something that is going to be put in as evidence?

The CHAIRMAN: Yes.

Hon. Mr. DAVIES: Fabricating would constitute perjury, would it not?

The CHAIRMAN: Not necessarily.

Hon. Mr. ROEBUCK: It might frequently be perjury.

The CHAIRMAN: That would be so if the person who fabricates and who tells the story is the same person, but somebody might do the fabricating and have a series of witnesses to unfold the tale.

Hon. Mr. ROEBUCK: Or leave it in such a way that an innocent witness will use it in a court.

The CHAIRMAN: We thought that the words, "Everyone who, with intent to mislead, fabricates evidence for the purpose of a judicial proceedings, existing or proposed. . . ." was too indefinite. The possibility of speculating there is teriffic, and so we have revised the section in the Code so as to make it clear.

Clause 118. Passed.

Clause 119. Sub-clause (d) to be inserted after sub-clause (c) of clause 125.

Hon. Mr. ROEBUCK: That is merely re-arranged, and it is unimportant.

Clause 120. Passed.

Clause 121 standing for consideration of the Main Committee.

The CHAIRMAN: We left this for the consideration of the Main Committee, and the section in the bill reads:

> Everyone who asks or obtains or agrees to receive or obtain any valuable consideration for himself or any other person by agreeing to compound or conceal an indictable offence is guilty of an indictable offence and is liable to imprisonment for two years.

Hon. Mr. VIEN: There is no change there?

Hon. Mr. ROEBUCK: It is new. Anyone who agrees to compound or conceal an indictable offence is himself guilty of an indictable offence.

Mr. MACNEILL: Concealing is somewhat analogous to compounding. It consists in concealing or permitting the concealment of felony. Concealing is the common law offence of misprision of felony. That offence is obsolete at the present time. That is the note in *Tremeear*.

The CHAIRMAN: We thought that we would bring this section to your attention. The report continues:

Clauses 122 and 123. Passed.

Your sub-committee dealt with the following clauses of the Bill which were reported by officials of the Department of Justice to change in substance the provisions of the present Criminal Code, as follows:

Clauses 124, 125, 129 and 130. Passed.

Clause 131. The provisions with regard to corroboration in charges of sexual offences were ordered to stand pending preparation of a memorandum on the subject by the departmental officials. The memorandum is attached as Appendix "A" to this report.

The CHAIRMAN: You will have a memorandum which will show all the offences and the provisions with regard to corroboration in respect to them. The report continues:

Clauses 132 and 133. Passed.

Clauses 135 to 137, both inclusive. Passed.

Clause 138. Stands.

The CHAIRMAN: I do not recall what clause 138 stands for. What was the purpose of having that stand?

Hon. Mr. ROEBUCK: I do not know why we stood it. It reads:

> Every male person who has sexual intercourse with a female person who
>
> (*a*) is not his wife, and
>
> (*b*) is under the age of fourteen years,
>
> whether or not he believes that she is fourteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.

When this was being discussed there was some question with regard to the duty of the judge to warn the jury of the necessity for corroboration, and it may be that it was on that ground that we stood this.

The CHAIRMAN: It relates back to section 131, and I think we stood it on the basis of the requirement of corroboration.

Hon. Mr. DAVIES: According to the Criminal Code as it now reads, is it necessary that the evidence in connection with an offence against a girl, let us say rape, be corroborated in court?

Hon. Mr. ROEBUCK: There have been changes made under the bill and they are very important ones. Under the Act the judge must warn the jury that it is unsafe to convict in an event of non-corroboration of the plaintiff's story, but they may convict if they feel like doing so under the bill. They could not under the old Code.

The CHAIRMAN: I would refer the committee to subsection (3) of section 131 of the bill, which reads:

> In proceedings for an offence under subsection (2) of section 138 or section 143, 144 or paragraph (*b*) of section 145 the burden of proving that the female person in respect of whom the offence is alleged to have been committed was not of previously chaste character is upon the accused.

We decided that this clause under discussion should stand so that the Main Committee could consider the question of corroboration. That is a matter which the Main Committee will have to decide upon. We hesitated when dealing with it because we felt that possibly there should be corroboration required. The report continues:

Clause 139 is amended as follows:—

Page 46, line 16, after "137" delete "or" and after "138" insert "140 or 142".

The clause as amended is passed. It provides that no male person shall be deemed to commit the offence of rape, attempted rape or having sexual intercourse with a female under fourteen years of age, if he himself is under fourteen years of age. The subcommittee is of opinion that if this exemption is to remain at all, to be consistent it should also cover clauses 140 and 142, indecent assault and incest.

Clause 140. Passed.

Clause 145. In offences of intercourse with a female employee, the present Code, section 213 subsection (2), permits the judge to instruct the jury that if the accused is not wholly or chiefly to blame for the commission of the offence, they may find a verdict of acquittal.

This safeguard is dropped in the Bill. The subcommittee is of opinion that it should be restored. It accordingly recommends that present subsection (2) of section 213 be added as subclause (2) of clause 145, to read as follows:

> (2) On the trial of any offence against paragraph (*b*) of this section, the trial judge may instruct the jury that if in their view the evidence does not show that the accused is wholly or chiefly to blame for the commission of the offence, they may find a verdict of acquittal.

The CHAIRMAN: That is the offence created by section 145(*b*), and section 145(*b*) creates this offence:

> Every male person who has illicit sexual intercourse with a female person of previously chaste character and under the age of twenty-one years who
>
> (i) is in his employment,
>
> (ii) is in a common, but not necessarily similar, employment with him and is, in respect of her employment or work, under or in any way subject to his control or direction, or

(iii) receives her wages or salary directly or indirectly from him,

is guilty of an indictable offence and is liable to imprisonment for two years.

Now we feel that there may be all kinds of compensating factors connected with the commission of an offence under these circumstances, and therefore the safeguard which is in the present section of the Code should remain. If the judge forms the opinion that the man is not wholly or chiefly to blame for the commission of the offence, he should instruct the jury that they may find a verdict of acquittal.

Hon. Mr. DAVIES: But a judge very often instructs a jury and then they do not pay attention to his instructions.

The CHAIRMAN: We cannot say it is not an offence, because it becomes a question of fact for the jury to decide whether it is so or not.

Hon. Mr. DAVIES: I should be inclined to leave it the way it is.

The CHAIRMAN: In the Code, yes, but the bill changes it, so we say that the Code section should be put back; that is our recommendation.

Clause 149 is amended as follows:—

Page 48, line 5, delete "act or gross indecency" and substitute "unnatural sexual act".

As drafted, 149 is a sweeping section. It reads:

Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

Section 206 of the Code relates to gross indecency with a male person. This has been carried into the bill omitting any reference to sex, and so may cover anything which the Court may in its opinion deem indecent, which is much too unguarded. Evidently it is sexual indecency that is in mind and the subcommittee is of opinion that the clause should be amended as set out above.

Hon. Mr. DAVIES: What is the difference between "gross indecency" and "indecent assault"?

Hon. Mr. ROEBUCK: Well, you get the definition of "assault", to begin with. It is the application of force or the threat of force on the person of somebody else when the person threatening is in the position to carry it out. That is in substance the definition of "assault".

The CHAIRMAN: "Indecent assault" might proceed quite involuntarily as far as one of the parties is concerned.

Hon. Mr. ROEBUCK: Yes. There are two parties to an indecent assault, the person assaulting and the person assaulted. But an act of gross indecency may be perhaps by only one party.

Hon. Mr. DAVIES: Something like indecent exposure.

Hon. Mr. ROEBUCK: But what is "gross indecency"? I don't know, because it has never been defined. It was not defined in the old Code, because the term was always used in connection with the act of a male person which imported the sexual idea. They dropped that out, but left "gross indecency" in the open, so anything which you or I might think indecent is covered by this clause as we now find it in the bill.

Hon. Mr. DAVIES: But to constitute indecent assault there must be some assault on a person.

Hon. Mr. ROEBUCK: Yes, there must have been some person assaulted.

The CHAIRMAN: We come now to "offences tending to corrupt morals":

Clause 150 is amended as follows:—

Page 48, line 10, delete "such a purpose" and substitute "the purpose of publication, distribution or circulation".

Page 48, line 14, delete "such a purpose" and substitute "the purpose of publication, distribution or sale".

Clause 154. Passed.

Clause 157. This clause refers to endangering the morals of a child and is a greatly condensed version of Code section 215 (2) to (6). The subcommittee feels that this clause should stand for full discussion and consideration by the main committee.

All you have to do is to read the section to appreciate the broadness of it, and the question whether it should be enacted in the form in which it is, or whether we should safeguard it. It says:

> 157. (1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers or is likely to endanger the morals of the child or renders or is likely to render the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) In proceedings under subsection (1) is it not a defence that a child is not old enough to understand or appreciate the nature of the conditions that prevail in the home or the nature of the acts that are alleged to have taken place in the home, or to be immediately affected thereby.
>
> (3) For the purpose of this section, "child" means a person who is or appears to be under the age of eighteen years.
>
> (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court.

Of course there is an infinite variety of situations you can imagine under 157, and whether every one should be swept into this section or not is a matter which should be debated. The purpose of the section is perfectly good, but whether it is too sweeping or not is something which has to be considered.

Clause 159. Nudity. It is a question whether the clause as presently worded is not wide enough to cover, for example, the shower-room of a golf club. In the corresponding section of the Code, section 205A, this possibility was protected against by requiring the consent of the Attorney-General before a charge was laid but this protection was dropped in the bill. The omission was thought to be more serious in view of the fact that the section has been used with respect to the Doukhobors, and the subcommittee is of opinion that the subsection requiring consent should be restored as sub-clause (3) of clause 159 to read as follows:—

> (3) No action or prosecution for a violation of this section shall be commenced without the leave of the Attorney-General for the province in which the offence is alleged to have been committed.

Hon. Mr. FOGO: Do the Doukhobors play golf?

Hon. Mr. VIEN: Or take showers?

The CHAIRMAN: I cannot say whether they take showers, or play golf, either. There are political considerations involved in handling the Doukhobors, and the provincial authorities are better acquainted with these political implications than the federal authority. Therefore we feel that in that regard, and also having regard to how broad the language of the section is, there should be some limitation so that people could not go "haywire" in preferring charges of nudity. For instance, section 159 reads:

(1) Every one who, without lawful excuse, (*a*) is nude in a public place, or (*b*) is nude and exposed to public view while on private property, whether or not the property is his own, is guilty of an offence punishable on summary conviction.

(2) For the purposes of this section a person is nude who is so clad as to offend against public decency or order.

We feel that when you use such broad language to lay the limits of the offence of nudity there should be some saving clause where somebody should show a little sense or discretion in a situation which would lend itself to abuse.

Hon. Mr. DAVIES: No one is nude unless they are completely nude.

Hon. Mr. ROEBUCK: They might be, under this:

For the purposes of this section a person is nude who is so clad as to offend against public decency or order.

There is the low neckline!

The CHAIRMAN: (Reading)

Clause 160. Passed.

In clause 161 we provide against disturbance of religious services.

The CHAIRMAN: (Reading)

Clause 161 is amended as follows:—

Page 52, line 21, after "wilfully" insert "wilfully and without lawful excuse".

Page 52, line 26, after "(2)", insert "wilfully and without lawful excuse".

Under the clause as presently worded, a property holder is powerless to do anything to disturb an assemblage of persons camping on his lawn.

Clauses 163 and 164. Passed.

Clause 165. Nuisances. Section 221 of the Code defines a common nuisance as an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of "any right common to all His Majesty's subjects".

Section 222 of the Code makes it an indictable offence to commit a common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

In the Bill the definition of common nuisance is omitted, and in effect gives an entirely new and remarkable definition. It says, "everyone commits a criminal common nuisance who does an unlawful act or fails to discharge a legal duty, and thereby (*a*) endangers the lives, safety, or health of the public, or, (*b*) causes physical injury to any person". So that an unlawful act causing physical injury is according to the bill a common nuisance. Such an act is already defined as "common assault".

Hon. Mr. DAVIES: Can a common nuisance be committed against an individual?

The CHAIRMAN: The basis or essence of an offence of a common nuisance must be damage to the public. The report continues:

From sub-clause (*a*) the words "property or comfort" of the public are committed, and also "obstructing the exercise or enjoyment of any right common to all His Majesty's subjects". The latter course, at least, is very important.

The CHAIRMAN: So we have made a redraft of it, restoring the definition of a common nuisance. That is, you have got to preserve some essential basis of criminal law in your approach to it, and just to make a physical injury to another person a common nuisance, without carrying it into the essence of

the offence which is disturbing the general public, or Her Majesty's subjects, is just a distortion which we felt shows no concept of a common nuisance at all.

Hon. Mr. ROEBUCK: It is a complete answer to the suggestion that this Code has been so thoroughly gone over by the officials that we should open our mouths and swallow it. It is a complete answer because no first-year law student would have passed that section if he had read it, and I cannot think it was passed by these commissioners after a reading and understanding of what they were passing. It is an outstanding piece of draftsmanship. It says:

> A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.
>
> Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

They strike out the definition and say that anybody who commits an unlawful act and thereby injures an individual commits a common nuisance.

Hon. Mr. FOGO: You have been reading from the Code as it stands?

Hon. Mr. ROEBUCK: Yes, now let me read from the bill, having got the Code in your minds:

> Every one commits a criminal common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
> (*a*) endangers the lives, safety or health of the public, or
> (*b*) causes physical injury to any person.

Hon. Mr. DAVIES: That is the bill?

Hon. Mr. ROEBUCK: Yes, the bill is absurd.

Hon. Mr. FOGO: You might drive on the wrong side of the street.

Hon. Mr. ROEBUCK: Yes, and if anybody strikes another person that would be an unlawful act, and it would come within this clause.

The CHAIRMAN: It is a complete misconception of what a common nuisance is. I shall continue reading from the report:

> The subcommittee requested a redraft of this clause, to read as follows:—
>
> 165. (1) Every one who commits a common nuisance and thereby
> (*a*) endangers the lives, safety or health of the public, or
> (*b*) causes physical injury to any person, is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
> (*a*) endangers the lives, safety, health, property or comfort of the public, or
> (*b*) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.
>
> Clause 168. Passed.
>
> Clause 171. Re: Search with or without warrant. Subclause (3) says,
>
> the Court before whom anything that is seized under this section is brought may (*a*) declare any money or security for money so seized and forfeited, and (*b*) direct that anything so seized other than money or security for money shall be destroyed, or if required for evidence, after it is no longer so required. There is no provision for notice to the

rightful owner, or even to the accused, and the subcommittee requested a redrafting of the clause to provide for the claiming of the goods by someone so disposed and the giving of a lag in time of 30 days before forfeiture is declared or until the proceedings are completed.

The CHAIRMAN: We did not feel in the execution of a search warrant they should be able to bring whatever they seized before a magistrate or justice of the peace and get an order for the immediate forfeiture or an order for the immediate destruction of the materials. We thought that there might be a rightful claim and a good defence, and that therefore there should be a lag in time before forfeiture is declared. The report continues:

The redraft of the clause reads as follows:—

171. (1) A justice who receives from a peace officer a report in writing that he has reasonable ground to believe and does believe that an offence under section 176, 177, 179 or 182 is being committed at any place within the jurisdiction of the justice, may issue a warrant under his hand authorizing a peace officer to enter and search the place by day or night and seize anything found therein that may be evidence that an offence under section 176, 177, 179 or 182, as the case may be, is being committed at that place, and to take into custody all persons who are found in or at that place and requiring those persons and things to be brought before him or before another justice having jurisdiction, and be dealt with according to law.

(2) A peace officer may, whether or not he is acting under a warrant issued pursuant to this section, take into custody any person whom he finds keeping a common gaming house and any person whom he finds therein, and may seize anything that may be evidence that such an offence is being committed and shall bring those persons and things before a justice having jurisdiction, to be dealt with according to law.

(3) Except where otherwise expressly provided by law, a court, judge, justice or magistrate before whom anything that is seized under this section is brought may

(*a*) declare that any money or security for money so seized is forfeited, and

(*b*) direct that anything so seized, other than money or security for money, shall be destroyed,

if no person shows sufficient cause why it should not be forfeited or destroyed, as the case may be.

(4) No declaration or direction shall be made pursuant to subsection (3) in respect of anything seized under this section until

(*a*) it is no longer required as evidence in any proceedings that are instituted pursuant to the seizure, or

(*b*) the expiration of thirty days from the time of seizure and such further time as it may be required as evidence in any proceedings.

(5) Nothing in this section authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

Clause 174. This gives the police power to bring a person accused in connection with a disorderly house before a magistrate, where he may be examined on oath, and in event of his refusing to answer, may be dealt with as a witness appearing before a Superior Court of criminal jurisdiction, that is, sent to jail for contempt of court. This is a most drastic inquisition. The

subclause does say, however, that section 5 of the Canada Evidence Act applies. That is to say, that a person who knows of the law may protect himself against the use of the evidence so extracted from him in any subsequent proceeding other than perjury by claiming the benefit of the section, but, as the individual will not be represented by a lawyer under such circumstances, only the well initiated will know enough to claim.

Hon. Mr. ROEBUCK: Once he answers the question without claiming the privilege he is sunk. We felt that you have to proceed on the basis that a lot of people do not know what section 5 of the Canada Evidence Act provides.

Hon. Mr. DAVIES: Or even what the Canada Evidence Act is.

The CHAIRMAN: That is right. Our suggested draft is that instead of referring to section 5 of the Canada Evidence Act, put the provision of section 5 in there, and then they have to read that to him, and he understands what his position is. The report continues: The sub-committee is of opinion that the provisions of the Canada Evidence Act in this regard should be written into the clause. The clause has been redrafted to read as follows:

> 174. (1) A justice before whom a person is taken pursuant to a warrant issued under section 171 or 172 may require that person to be examined on oath and to give evidence with respect to
> (*a*) the purpose for which the place referred to in the warrant is or has been used, kept or occupied, and
> (*b*) any matter relating to the execution of the warrant.
>
> (2) A person to whom this section applies who
> (*a*) refuses to be sworn, or
> (*b*) refuses to answer a question.
> may be dealt with in the same manner as a witness appearing before a superior court of criminal jurisdiction pursuant to a subpoena.
>
> (3) No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence.

Clause 178. Stands. A proposal to amend section 235 of the Code is now before Parliament. If the amendment is made, it should be written into this clause.

The CHAIRMAN: That amendment has been made by the Senate. That was the bill we had before us in connection with race meetings, and it is in the Commons now, so that section 178 in the bill will be amended by incorporating these provisions. The report continues:

Clause 180. Passed.

Clause 184. Passed.

Clause 186. Section 241 and following sections of the Code refer to failure to provide necessaries, and, if death is caused or life endangered, or health has been or is likely to be permanently injured, penalties are provided. The destitution or necessity of the person injured is thus a prime element in the offence.

The CHAIRMAN: This is where they get completely off base again. The essence of the offence under the Code as it stands is the destitution or necessity of the person injured; that is, the harm done to the public. The report continues:

The Bill drops this prime requisite entirely, and places a "legal duty" on the parent, husband, guardian, etc., to provide necessaries, and provides penalties for he who fails "without lawful excuse, the proof of which lies upon him, to provide necessaries."

In view of the fact that the legal duty is pronounced by statute without qualification, the only lawful excuse for not providing them would be such as

adultery in the case of a wife, and perhaps inability on the part of the accused. Thus the wife, child or ward might be rolling in wealth, and far better off than the husband, father or guardian, and yet the latter be guilty of a criminal offence for not adding to their abundance. This is a complete change in the principle of the law. The subcommittee ordered the section to stand so that the provision with regard to destitution or the endangering of health could be reinserted.

We feel that the basis of the offence of failing to provide necessaries has been removed. As a result, they say that in law there is liability and, if you are guilty under this section, it is a criminal offence, without taking into account the quality of the person to whom the right is given. After all, the concept must be harm resulting from what has been done or neglected.

Hon. Mr. DAVIES: Does this bill come to us straight from the Commission, or has it been reviewed?

The CHAIRMAN: It has been reviewed in the department.

Hon. Mr. DAVIES: It is the minister's bill?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: You mean, it comes from the department.

The CHAIRMAN: (Reading)

Clauses 189 and 190. Passed.

Clause 191. Criminal Negligence. This clause says, that "everyone is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other people (*a*) by doing anything". This actually says that everyone by doing anything shows a wanton or reckless disregard for the lives or safety of other persons and is criminally negligent.

The subcommittee ordered subclause (1) to be redrawn to read as follows:—

> 191. (1) Every one is criminally negligent who
> (*a*) in doing anything, or
> (*b*) in omitting to do anything that it is his duty to do,
> shows wanton or reckless disregard for the lives or safety of other persons."

You may recall that, when the minister had finished his explanation in the Senate, I asked him about this section, because the way it read seemed to be rather unusual. As defined in the bill:

> 191. (1) Every one is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other persons
> (*a*) by doing anything, or
> (*b*) by omitting to do anything that it is his duty to do.
> (2) For the purposes of this section, "duty" means
> (*a*) a duty imposed by law, or
> (*b*) a duty for the breach of which a person may be found liable in civil proceedings."

Those tests present all sorts of difficulties, because there may be a civil proceeding pending, the judge is trying a criminal proceeding, and he is going to adjudicate in effect on the civil proceeding by telling the jury "This man has committed an offence of which he may be found liable in civil proceedings". That is an instruction he gives them before the civil case has ever been tried. We thought that was a very back-handed way of trying to define "criminal negligence", so we have made the definition which I have quoted. This seems a direct and straightforward way of stating the offence, and if you compare the two you will realize how much more intelligible it is.

Clause 194. Homicide. Subclause (6) exempts a person from an accusation of homicide, "by reason only that he causes the death of a human being by

procuring, by false evidence, the conviction and death of that human being by sentence of the law." A more despicable method of securing the death of a fellow creature could hardly be imagined. No explanation is given for its continuation in the bill.

Hon. Mr. ROEBUCK: And we are asked to swallow this thing holus bolus!

The CHAIRMAN: What we are doing is, we are raising for your consideration whether or not a person who causes the death of a human being by procuring by false evidence his conviction and his death by hanging should be exempt from a charge of homicide.

Hon. Mr. FOGO: For example, a perjurer.

The CHAIRMAN: Yes. That might be one way. He might be a material witness.

Hon. Mr. FOGO: That is, if his evidence was the key evidence leading to conviction, and that were capable of being established.

The CHAIRMAN: Yes. (Reading)

Clause 198. Passed.

Clause 202. Passed.

Clauses 204 and 205. Passed.

Clause 212. Passed.

The next clause deals with attempts to commit suicide:

Clause 213. It is suggested that attempt to commit suicide should be an offence punishable on summary conviction and should not be indictable. Our feeling was that a poor person who had made his attempt had had considerable punishment in the course of trying to commit suicide, and if he ever recovered, and righted himself, there should be some penalty because it would give the courts some jurisdiction over him to give him treatment if he needed treatment, but that that was more desirable than simply inflicting a long term of years as punishment.

Hon. Mr. ROEBUCK: You cannot make an attempt at suicide no offence at all, because if the police come upon somebody who is attempting to commit suicide it is most necessary that they shall be able to arrest him and carry him into custody, but such person should be taken before a magistrate, and one can hardly imagine the man being indicted and taken before a jury. It should be a summary offence.

Hon. Mr. FOGO: It may be a question whether a magistrate might be liable to be more severe than a jury.

Hon. Mr. ROEBUCK: But the magistrate would refer him to a psychiatric hospital for examination.

The CHAIRMAN: We have made it a summary offence, which means a penalty of $500 and/or six months.

Hon. Mr. ROEBUCK: That is right,—or both.

The CHAIRMAN: (Reading)

Clause 216. Passed.

Clause 217(*b*) is questioned.

It is questioned mainly because we do not know what they mean by the language. The section says:

> 217. Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and is liable
>
> (*a*) to imprisonment for fourteen years, if thereby he endangers the life of or causes bodily harm to that person, or
>
> (*b*) to imprisonment for two years, if he aggrieves or annoys that person or does it with intent thereby to aggrieve or annoy that person.

Frankly, we did not know what that meant, and you can understand why we have been proceeding cautiously and hesitantly in examining these sections. We have "questioned"—that is a mild way of putting it—this particular section.

Hon. Mr. DAVIES: Do you think what they mean is that if it is given by a doctor of medicine it is not given to aggrieve or with intent to annoy?

The CHAIRMAN: No, this deal with one who "administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing". The penalty is two years if he aggrieves or annoys the person; that is, if a noxious thing or a poison does not do its work and endanger the life or occasion bodily harm, but only aggrieves him. What is the quality of aggrieving or annoying a person or the "intent" to aggrieve or annoy"?

Hon. Mr. ROEBUCK: If they had said it does bodily harm we would have understood it.

The CHAIRMAN: That is in subsection (*a*).

Hon. Mr. ROEBUCK: Yes, but in subsection (*b*).

The CHAIRMAN: We think it has no place in that section.

Hon. Mr. ROEBUCK: It is new law, by the way.

The CHAIRMAN: Yes.

Clause 220. Section 282 of the Code states with considerable particularity the offence of endangering lives by interfering with a railway such as throwing a log on the track and so on. The bill substitutes the words "common carrier", and in so doing places outside the protection of the criminal law, railways which are not common carriers, and there are many in Canada, running to mines, or in the lumber woods, or industrial plants.

The clause has been redrawn to read as follows:—

> 220. Every one who, with intent to endanger the safety of any person
> (*a*) places anything in, upon or near, or
> (*b*) does anything to
> any property that is used for or in connection with the transportation of persons by land, water or air is, if death or bodily harm is likely to be caused to persons thereby, guilty of an indictable offence and is liable to imprisonment for life.

Clause 221. Subclause (2) requires every one in charge of a vehicle involved in an accident to stop his vehicle, offer assistance and give his name and address. He must offer assistance whether it is required or not, and "vehicle" is wide enough to cover everything from a locomotive to a wheelbarrow.

The sub-committee ordered the paragraph to stand for reconsideration and redrafting, so as to insert "when required" after "offer of assistance", and a reconsideration of the word "vehicle".

Clause 225. Passed.

Clause 227. Passed.

Clause 228. Section 287 of the Code places a burden upon persons cutting holes in ice, digging shafts for mines, or excavations upon lands, to fence the dangerous property.

The bill has omitted all particularity, substituting the "legal duty" to guard it in such a manner that is adequate to prevent persons from falling in by accident. This is literally the equivalent of the detail previously mentioned in the Code, but nevertheless the loss of the particularity is open to

question, and then the bill goes on to give an alternative, "or is adequate to warn them that the opening exists". Although an act may be adequate to warn, a warning is frequently not adequate to prevent accidents, and this new law, the sub-committee ordered deleted, that is to say, they struck out the words "or is adequate to warn them that the excavation exists" and ordered the clause to stand for further discussion as to whether "the legal duty to guard it" sufficiently expresses the prohibition.

The CHAIRMAN: We did not think it did.

Hon. Mr. ROEBUCK: I have been thinking about this since, and I think we should make that "and" instead of "or". Let it read:

". . . to guard it in such a manner that is adequate to prevent persons from falling in by accident, and adequate to warn them that it exists".

We struck out the words "adequate to warn them that the opening exists" because to do that alone is not sufficient. You might put an ad in the newspapers and that might be described as "adequate to warn them that it exists" but that should not relieve them from the obligation to protect it.

Hon. Mr. DAVIES: Should it state what is adequate?

Hon. Mr. ROEBUCK: The Code itself does do that, but they have dropped that out from the bill.

The CHAIRMAN: We think that the provisions of the old section are good and possibly should be restored.

Hon. Mr. DAVIES: Some of the protections around manholes are very inadequate.

The CHAIRMAN: The brief continues:

Clauses 231 and 232. Passed.

Clauses 266 and 267. Passed.

Clauses 269 and 270. Passed.

Clause 273. Section 351 of the Code refers to obtaining electricity and telephone and telegraph service. "Gas" has been added in the Bill. In carrying the section into the Bill, the *wasting* of gas or electricity is not covered as the word "maliciously" has been omitted. The sub-committee ordered that the words "maliciously or" be inserted before the word "fraudulently" in the first line of the clause so that the prohibition would cover both the taking of it for use by the thief, or the maliciously wasting of it.

Clauses 283 and 284. Passed.

Clause 287. Passed.

Clause 292. In subclause (4), line 42, page 96, "aeroplane" was struck out and the word "aircraft" substituted therefor.

Clauses 293 and 294. Passed.

Clause 299. This clause is amended by inserting before the word "theft", in line 36, page 98, the words "the offence of".

The CHAIRMAN: This is really one of the wonderful ones, is it not, Senator Roebuck?

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN (Reading):

Clause 301. Under the present Code, it is permissible for the Crown, when charging receiving or retaining stolen goods, to rebut the presumption or evidence of lack of knowledge that the goods were stolen by evidence that the accused was on a previous occasion guilty of having stolen property in his possession. This is of course extraordinary proceeding, for it puts the accused on trial for previous offences, while the policy of English criminal law is to exclude the record of the accused, and try him on the offence charged.

In carrying this provision to the Bill, this privilege of the Crown is widened so that evidence may be given of the possession of property obtained by "an offence punishable by indictment". Property may be obtained by offences punishable by indictment totally different in character from the theft of goods, such as forgery, false pretences, a rubber cheque and numerous other such acts. The clause as drawn may put the accused on trial for his entire record.

The sub-committee ordered the clause to stand to be redrafted and to be limited to evidence of receiving or obtaining, that is, the possession of stolen goods only.

The clause as redrawn reads as follows:

301. (1) Where an accused is charged with an offence under section 296, 297 or paragraph (*b*) or (c) of subsection (1) of section 298 in respect of stolen property, evidence is admissible at any stage of the proceedings to show that property other than the property that is the subject matter of the proceedings.

(*a*) was found in the possession of the accused, and

(*b*) was stolen within twelve months before proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property forming the subject matter of the proceedings was stolen property.

(2) Subsection (1) does not apply unless

(*a*) at least three days' notice in writing is given to the accused that in the proceedings it is intended to prove that property other than the property that is the subject matter of the proceedings was found in his possession, and

(*b*) the notice sets out the nature or description of the property and describes the person from whom it was stolen.

Clause 302. Passed.

Clauses 314 and 315. Passed.

Clause 318. Passed.

Clause 320. Subclause (1) (c) makes it an offence to destroy, damage or obliterate an "election document, which by subclause (2) means any writing relating to an election held under the authority of an Act of the Parliament of Canada or of a legislature". Any writing relating to an election may be almost anything, and the sub-committee ordered the clause to be redrawn making it clear that the document is issued by an official with respect to any election held pursuant to any such Act.

The amendment reads as follows:

Page 106, lines 20 to 23, both inclusive, strike out subclause (2) and substitute the following:

(2) In this section "election documents" means any document or writing issued under the authority of an Act of the Parliament of Canada or of a legislature, with respect to an election held pursuant to the authority of any such Act.

Clause 321. Passed.

Clause 323. Passed.

Clause 331. Passed.

Clauses 336 to 342, both inclusive. Passed.

Clause 344. section 412 of the Code makes it an offence to obtain the carriage of intoxicating liquor by false billing into a county, province, district or other place, where the importation is unlawful. This provision is carried into the bill but was extended to the carriage of anything, so that it would

include any article or substance which a provincial legislature made unlawful. The Code is thus placed at the disposal of the provincial legislatures in banning inter-provincial trade.

The subcommittee ordered the word "anything" to be struck out, and the words "intoxicating liquor" to be replaced, thus, preserving the law as it has been in the past.

The clause is amended as follows:—

Page 115, line 24, strike out "anything" and substitute "intoxicating liquor".

Clause 350. Passed.

Clause 353. Passed.

Clause 355. This clause is amended as follows:—

Page 119, line 4, after "is" insert ", unless the Court otherwise orders".

Clause 362. Passed.

Clause 365. This clause is amended as follows:—

Page 122, line 22, after "railway" add "that is a common carrier".

Clause 366. Passed.

Clauses 368 and 369. Passed.

Clause 373. Passed.

Clause 377. Passed.

Clause 384. Passed.

Clause 387. This clause stands at the request of the Department of Justice. Representations are being considered from veterinary organizations.

Part X—Clauses 391 to 405, both inclusive. Passed.

The CHAIRMAN: These sections deal with currency offences, and there will be a new Act with respect to that. The report continues:

Clauses 406 to 408, both inclusive. Passed.

Clause 413. The subcommittee is of the opinion that an offence by the holder of a judicial office should be excluded from the operation of subclause (2).

The CHAIRMAN: Mr. MacNeill, would you very briefly explain the purpose of this?

Mr. MACNEILL: This is the clause which authorizes a court of criminal jurisdiction to try indictable offences other than those enumerated. The subcommittee felt that an offence committed by the holder of a judicial office should not be tried by a judge but should be tried by a judge and jury.

Hon. Mr. ROEBUCK: We did not think that a judge should be under obligation to try another judge.

The CHAIRMAN: That is right. It does not make sense.

Hon. Mr. FOGO: He would not be able to elect.

The CHAIRMAN: That is right.

Hon. Mr. DAVIES: But it is done now under the Act?

Hon. Mr. ROEBUCK: Official corruption under the Code must be tried by a jury, and we have left it to that.

Hon. Mr. DAVIES: You do not mean that if a judge commits a criminal offence he cannot be tried by another judge?

Hon. Mr. ROEBUCK: No, not a criminal offence, but official corruption. Then he must go to a jury.

The CHAIRMAN: The report continues:

The clause has been redrafted to read as follows:—

413. (1) Every superior court of criminal jurisdiction has jurisdiction to try any indictable offence.

(2) Every court of criminal jurisdiction has jurisdiction to try an indictable offence other than

(*a*) an offence under any of the following sections, namely,
(i) section 47,
(ii) section 51,
(iii) section 52,
(iv) section 53,
(v) section 75,
(vi) section 76,
(vii) section 206,
(viii) section 207,
(ix) section 210,
(x) paragraph (*a*) of subsection (1) of section 316,
(xi) paragraph (*a*) of section 408,
(xii) section 411, or
(xiii) section 412.

(*b*) the offence of being an accessory after the fact to treason or murder; or

(*c*) an offence under section 100 by the holder of a judicial office.

Clause 416. Stand.
Clauses 418 and 419. Passed.
Clauses 422 and 424. Passed.
Clauses 427 and 429. Passed.
Clause 432. Passed.
Clause 433. Passed.
Clause 434. Passed.
Clause 435. Passed.
Clause 445. Passed.
Clause 446. Passed.

Clause 447. The subcommittee recommends that the clause be amended to restore the original requirement of proof being made on oath or affirmation of the handwriting of the justice who issued the warrant.

This is the case of where a warrant is issued in one jurisdiction and the accused is or is believed to be in another jurisdiction, and the warrant has to go to the justice in the other jurisdiction and he endorses it so that it can be executed there. We thought that the signature of the justice on the original warrant should be verified in some way before the second justice is required to act on it.

Clause 450. This clause should stand for further discussion and clarification.

It is a complicated clause, dealing with elections, and there are a number of things in it which we thought were not clear, and we wanted to have a discussion of it with departmental officers, which we have not had, so we decided that the clause should stand.

Clause 451 deals with "powers of justice": Our report states:

Clause 451. This clause is amended as follows:—

Page 154, line 24, before "informant" insert "prosecutor or".

Page 154, line 44, after "adjourned" add "with the consent of both the prosecutor or informant and the accused or his counsel".

The first amendment we suggest is in a case where a prisoner comes before a justice, and the inquiry is adjourned, and he is at large on bail. We thought that the old section was the proper one, that, with his consent and that of his sureties and the prosecutor or informant the man might be remanded for more than eight days. It is too much trouble running about trying to find an informant who may not be in court when the case comes up. So we thought it would simplify matters to add "prosecutor" as well.

Our next proposed amendment deals with a case where, the evidence of the witnesses called on behalf of the prosecution having been taken down and read, "the justice shall address the accused as follows or to the like effect." In the bill they just insert these words:

> Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial.

We feel that the old warning was much better. I will read our recommendation:

Clause 454. The subcommittee recommends that the form of address to the accused be restored to its original wording as found in section 684(2) of the Criminal Code, which reads as follows:—

> (2) . . . . Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise or favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you at your trial notwithstanding such promise or threat.

In other words we thought that this full warning is necessary and advisable and should be given.

Clause 460. Passed.

Clause 461. Passed.

Clause 463. Passed.

Clause 464. Passed.

Some representations had been made to us in connection with the next clause we deal with:

Clause 727. Under this clause, appeals are to be heard on the evidence taken at the trial. Under the present appeal provisions of the Code the appeal from a summary conviction offence is a trial *de novo*.

The subcommittee has had representations made to it to the effect that the clause should be amended to preserve the present method of hearing appeals. The subcommittee recommends that this change be made in the bill.

As stated, at the present time an appeal from a magistrate going to a county court judge may be by way of a trial *de novo* unless the parties consent to make use of the transcript of the evidence before the magistrate as the basis for arguing the appeal. The new bill proposed to do away with the provision for a trial *de novo* and simply states that the transcript of evidence before the magistrate would be the basis for disposing of the appeal. There have been a lot of representations that the trial *de novo* should be restored. Very often the man who comes before a magistrate does not appreciate the importance of the charge against him; he does not even have a lawyer; so there is a perfunctory sort of trial, where he has not a proper concept of what is good or sufficient evidence; the case is tried, and if the new section in the bill should become law he is locked in with that, and on that basis he has got to argue his appeal.

Hon. Mr. ROEBUCK: He is "sunk".

The CHAIRMAN: We have said that if all the parties, the Crown and accused, are satisfied with the transcript, the judge may deal with the appeal on the basis of the transcript; if they are not, then the trial takes place all over again. We think that is a very good and wise provision and should be retained, so we recommend it.

Hon. Mr. ROEBUCK: Some of the judges have expressed a desire that we do not pass this clause, because, they say, they want to see the witnesses.

The CHAIRMAN: (Reading)

The subcommittee notes that its examination of the bill is far from complete. There are 748 clauses in the bill and many of these have not yet been considered. The considerable number of amendments recommended in this interim report indicates the necessity for a complete examination.

Hon. Mr. VIEN: Is this report of the subcommittee to be printed?

The CHAIRMAN: Yes.

Hon. Mr. VIEN: Where?

The CHAIRMAN: In the proceedings of the committee. It has been taken down; it will be printed, and the appendices referred to will be attached; and it will be distributed.

Hon. Mr. ROEBUCK: Then we meet again and discuss the details that you wish to discuss.

Hon. Mr. VIEN: Next week, or later?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: In the meantime we are going on with this tremendously laborious job of checking these sections.

The CHAIRMAN: You have got to read every section.

Thereupon the committee adjourned.

—	A Corroboration now required	Bill No.	How disposed of in Bill
74.....	Treason.....	.....	Retained cl. 47 (2).
174.....	Perjury.....	.....	Retained cl. 115.
211.....	Seduction of girl between 16 and 18.....	143.....	Retained cl. 131 (1).
212.....	Seduction under promise of marriage.....	144.....	Retained cl. 131 (1).
213.....	Seduction of foster child, step child or ward; Seduc- duction of female employee.....	145.....	Retained cl. 131 (1).
214.....	Seduction of female passenger on vessel.....	146.....	Retained cl. 131 (1).
215 (1)....	Parent or guardian procuring defilement.....	155.....	Retained cl. 131 (1).
216.....	Procuring.....	184.....	Retained in part in 184 (3). See B below.
217.....	Householder permitting defilement.....	156.....	Dropped, see B below.
218.....	Conspiracy to defile.....	408 *(c)*...	Dropped, see B below.
219.....	Carnal knowledge of idiots or deaf mutes.....	140.....	Retained as to part of section. retained. See B below.
220.....	Prostitution of Indian women.....	.....	Dropped, see B below.
301.....	Carnal knowledge of girl under 14.....	138.....	Cl. 134 applies.
	Carnla knowledge of girl between 14 and 16.....	138.....	See B below.
307.....	Communicating venereal disease.....	239.....	Retained cl. 239 (3).
309 (2)....	Procuring feigned marriage.....	242.....	Retained cl. 242 (2).
468.....	Forgery.....	310 (1)...	Retained cl. 310 (2).
469\.....	Forgery.....	.....	Repealed 1950.
470/			
1003 (2)...	This requires corrob oration in cases of having or attempting to have carnal knowledge of a girl under 14 or in cases of indecent assault under sec. 292 where the evidence of a child of tender years is admitted unsworn. Section 16 of the Canada Evidence Act requires corroboration of the unsworn evidence of a child of tender years in all cases. Subsection (1) Of section 1003 which governs the admission of such evidence has been dropped and left to the operation of Sec. 16 of the Canada Evidence Act. They have been held to be coextensive and their history shows them as coming from the same source. Clause 566 retains the requirement that such evidence be corroborated and it will apply generally.		

B

Showing where the requirement of corroboration has been dropped, replaced or added.

216. Procuring. Dropped in respect to 184(1)(*j*)—Living on the avails of prostitution). It was considered to be inconsistent with the presumption raised by clause 184(2).

217. Householder permitting defilement. This has been held to apply to houses of assignation. It was thought that there was no more reason for requiring it in such cases than in bawdy house cases where the Code does not now require it.

218. Conspiracy to defile. It was felt that it would be rarely, if ever, that the victim would be able to prove the conspiracy and that there was no more reason for requiring corroboration in such cases than in other cases of conspiracy.

220. Prostitution of Indian Women. This was dropped at the request of the Minister of Citizenship and Immigration. In a letter dated June 15, 1951, he stated in part that Indians should be in the same position as other citizens under the Criminal Code.

301. The requirement in clause 134 setting out an instruction to be given to the jury is substituted for the requirement of corroboration. There have been a number of instances of attacks upon very young girls committed under circumstances where it is difficult, if not impossible, to obtain corroboration of the evidence of the victim. It is probable that in some of such cases the offences are committed by criminal sexual psychopaths. It is felt that the issue of credibility should be left to the jury under such a safeguard as clause 134 provides.

Clause 134 involves an added provision. A rule of practice requires that the instruction set out in the clause be given in cases of rape. This rule of practice has ben codified to cover rape and attempts to commit rape.

In dealing with corroboration it may be mentioned that a similar rule of practice applies with regard to the evidence of accomplices. It has not been codified in that respect and is mentioned here only because it might apply in cases of incest.

219. This appears in clause 140 omitting the reference to deaf mutes. This omission is consequent upon the case of *R. v. Probe*, 79 C.C.C. 289, where it was held that it must be shown that the woman was, by reason of her infirmity, mentally and morally incapable of resisting the solicitations.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
125	185, 189, 190	Changed in form only.
126	193, 194, 195	Changed in form only.
127	191, 192	Changed in form only.
128	186	Unchanged.
131 (2)	214 (2)	Unchanged.
131 (4)	211 (2), 213 (2), 301 (4)	Changed in form only.
135	298 (1)	Unchanged.
137	300	Unchanged.
141	292 *(a)*, *(b)*	Changed in form only.
142	204	Changed in form only.
143	211 (1)	Unchanged.
144	212	Changed in form only.
146	214 (1)	Changed in form only.
147	202	Changed in form only.
151	207A	Changed in form only.
152	208	Changed in form only.
153	209 *(a)*, *(b)*	Changed in form only.
155	215 (1)	Unchanged.
156	217	Changed in form only.
158	205	Unchanged.
161	199, 200, and 201	Changed in form only.
165	221, 222	Changed in form only.
166	136	Changed in form only.
167	237	Unchanged.
169	985, 986 (1), (2) and (3)	Changed in form only.
170	986 (4)	Changed in form only.
172	640	Changed in form only.
173	640, 641 (1)	Changed in form only.
175	230	Changed in form only.
176	228, 229 (1)	Changed in form only.
177	235 (1)	Changed in form only.
179	236, 442 *(b)*	Changed in form only.
181	442 *(a)*	Unchanged.
182	228, 229 (2), (4), (6), (7)	Changed in form only.
183	229 (8)	Unchanged.
185 *(a)*, *(c)* and *(d)*	240	Unchanged.
187	246	Unchanged.
188	248	Unchanged.
194	250, 252, 253	Changed in form only.
195	251	Unchanged.
196	257	Unchanged.
197	258	Unchanged.
199	256	Unchanged.
200	255	Unchanged.
201	259	Unchanged.
203	261	Unchanged.
206	263	Unchanged.
207	268	Unchanged.
208	268A	Unchanged.
209	306	Unchanged.
210	264	Changed in form only.
211	267	Unchanged.
213	270	Unchanged.
214	271	Changed in form only.
215	272	Unchanged.
218	276	Changed in form only.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—	Bill No.	Code No.	—
219	281	Changed in form only.	256	321	Unchanged.
221	285 (2)	Unchanged.	257	322	Unchanged.
222	285 (4)	Unchanged.	258	323	Unchanged.
223	285 (4) *(a)*	Unchanged.	259	324	Unchanged.
224	285 (4) *(b)* to *(e)*	Unchanged.	260	325	Unchanged.
226	285 (5)	Changed in form only.	261	331	Unchanged.
229	288, 289, 595	Changed in form only.	262	319	Unchanged.
230	290	Unchanged.	263	327	Unchanged.
233	297	Changed in form only.	264	328	Unchanged.
234	313	Unchanged.	265	326	Unchanged.
235	315	Unchanged.	268 *(a)*	335 *(d)*	Changed in form only.
236	316	Changed in form only.	268 *(b)*	335 *(h)*	Unchanged.
237	303, 304	Changed in form only.	268 *(c)*	335 *(j)*	Changed in form only.
238	305	Unchanged.	268 *(d)*	335 *(k)*	Changed in form only.
239	307	Changed in form only.	268 *(e)*	335 *(l)*	Changed in form only.
240	308	Changed in form only.	268 *(f)*	335 *(s)*	Unchanged.
242	309 (2), 1002*(d)*.	Unchanged.	271	348	Unchanged.
243	310, 948	Changed in form only.	272	349 (1)	Unchanged.
244	311	Changed in form only.	274	352	Changed in form only.
245	312	Unchanged.	275	354	Unchanged.
246	198	Unchanged.	276	355	Changed in form only.
247	2 (23)	Unchanged.	277	356	Unchanged.
248	317	Unchanged.	278	357	Unchanged.
249	318	Unchanged.	279	378 (2)	Unchanged.
250	333	Unchanged.	281	285 (3)	Changed in form only.
251	334	Unchanged.	282	390	Unchanged.
252	332	Changed in form only.	285	394, 431 (4), 638 and 990	Changed in form only.
253	329	Unchanged.	286	396	Changed in form only.
254	330	Changed in form only.	288	445, 446, 448	Changed in form only.
255	310	Unchanged.	289	447	Changed in form only.
			290	449	Unchanged.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—	Bill No.	Code No.	—
291	450-454	Changed in form only.	334	428	Changed in form only.
295	464	Changed in form only.	335	417 *(a)*, *(b)*	Unchanged.
296	399	Unchanged.	343	414	Changed in form only.
297	399	Unchanged.	345	417 *(c)*	Changed in form only.
298	364, 365, 400 and 869	Changed in form only.	346	408, 410	Changed in form only.
303	404	Unchanged.	347	409	Changed in form only.
304	405, 407 (2)	Changed in form only.	348	411	Unchanged.
305	406 (1)	Unchanged.	349	486	Changed in form only.
306	406 (2) and (3)	Unchanged.	351 (1)	488 (1), 489	Changed in form only.
307	407 (3)	Unchanged.	351 (2)	488 (2)	Unchanged.
308	443	Unchanged.	351 (3)	336	Unchanged.
309	466	Unchanged.	351 (4)	335 *(n)* and *(w)* 341 and 342	Changed in form only.
310	468, 1002	Unchanged.	352	488 (1) *(a)*, *(c)* and *(e)* and 494	Changed in form only.
311	467	Changed in form only.	354	490A	Changed in form only.
312	471, 472, 473	Changed in form only.	357	992	Changed in form only.
313	474	Unchanged.	358	430	Unchanged.
316	265, 516, 537 (1) *(c)* and 538	Changed in form only.	359	432	Unchanged.
317	477	Unchanged.	360	433	Unchanged.
319	479	Changed in form only.	361	434 (2), (2)	Unchanged.
322	335 *(m)*, *(o)*, *(v)*, *(x)*, *(y)* and ss. (2)	Unchanged.	363 (1)	436	Unchanged.
324	209 *(c)*	Unchanged.	364	991	Changed in form only.
325	444A	Unchanged.	367	502A	Unchanged.
326	231, 987	Unchanged.	371	509, 541 pt	Changed in form only.
327	231A	Unchanged.	372	See secs. noted in Bill, p. 125	Changed in form only.
328	419	Changed in form only.	374	511, 513	Changed in form only.
329	420	Unchanged.	375	512, 514	Changed in form only.
330	421	Unchanged.			
332	426	Changed in form only.			
333	427	Changed in form only.			

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
376	541 pt	Unchanged.
378	516A	Changed in form only.
379	524	Unchanged.
380	526	Changed in form only.
381	527	Unchanged.
382	529	Changed in form only.
383	530	Changed in form only.
385	536	Changed in form only.
386	393, 537 (1)	Changed in form only.
388	543	Changed in form only.
389	544	Changed in form only.
390	545	Changed in form only.
407	69 *(d)*, 572 pt	Changed in form only.
408 *(a)*	266 *(a)*	Unchanged.
408 *(b)*	178	Changed in form only.
408 *(e)*	573	Unchanged.
409	496, 497	Unchanged.
410 (1)	590	Changed in form only.
410 (2)	2 (41)	Unchanged.
411	498	Changed in form only.
412	498A	Changed in form only.
414	577	Changed in form only.
417	581A	Unchanged.
421 (1), (2)	888	Unchanged.
423	586, 587	Changed in form only.
425	604	Changed in form only.
426	606	Changed in form only.
428	645, 714, 787	Changed in form only.
430	630	Unchanged.
436	649	Unchanged.
437	650	Changed in form only.
439	653, 654	Changed in form only.
440	655 (1), (2) and (4), 658 (3) and 659 (2)	Changed in form only.
441	658, 782 (1)	Changed in form only.
442	659 (1), 660 (2) and (3) and 664	Changed in form only.
443	660 (1)	Changed in form only.
444	660 (4) and (5)	Changed in form only.
448	667	Changed in form only.
449	668	Changed in form only.
453	682, 683, 684 (1)	Changed in form only.
455	685	Unchanged.
456	655 (2) and (3), 666	Changed in form only.
457	678	Changed in form only.
458	669	Changed in form only.

SECTIONS DROPPED

Code No.	Code No.	Code No.	Code No.
2 (1)	223	366–377	515 (3)–(6)
Para. (3) (6) (9) (10) (16) (18) (20) (26) (28) (35) (37)	224	378 (1)	540
	232	379–385	549 (2)
	233	386 (2)	568
	247	388	578
	275	389	588
	285 (1)	392 *(d)*	589
14	285 (6)	393	592
38	302	395	594
100	314	401	596
104	335 (1) *(a)*	403	597
107	335 (1) *(b)*	407 (1)	598
108	335 (1) *(c)*	412 (1)	599–602
109	335 (1) *(e)*	415A *(a)*, *(d)*, *(e)*	603
110	335 (1) *(e)* and *(f)*	422	605
130	335 (1) *(i)*	423	607
131	335 (1) *(p)*	424 (2)–(5)	619
132	335 (1) *(q)*	429	620, 621
140	335 (1) *(r)*	431 (1)–(3)	623–626
170 (2)	335 (1) *(t)*	441	627, 628
179 (1)	335 (1) *(u)*	493	636
181	337	495	643
184	338	500	656
203	343	503	663
205A (2)	349 (2)	504A	665 (1)
211 (3)	350	505 (3), (4)	688
220	353	506	689
222A	358–363	508	

NEW PROVISIONS.

Bill No.	Bill No.	Bill No.	Bill No.
2 (6)	85 (2)	186 (3) *(d)*	408 *(d)*
2 (7)	87	191, 192, 193	419 *(d)*
2 (10)	92		420 (1)
2 (25)	116	221 (1)	421 (3)
2 (27)	120	241 (2)	431
2 (32)	121	280	432 (3), (4)
2 (37)	134	363 (2)	438 (1)
7 and 8	154	370	450 (2), (3)
11	162	372 (1)	451 *(c)* (B)
50 *(a)* (ii)	185 *(b)*	397	452

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES

Bill No.	Code No.	Remarks
124	187, 188	As redrawn includes everyone in custody and not only those on a criminal charge.
129	196	Definition of escape redrawn to make certain that it includes "breaking prison".
130	197	"Guardian" unchanged in effect. Referred to in secs. 145 and 155.
		"Public place" clarified so as to include places where public have access in fact but not as of right.
131 (1)	1002 *(c)*	Corroboration no longer required under sec. 156.
131 (3)	210	Widened to include carnal knowledge of girl between 14 and 16.
132	294	This may be widened by inclusion of the offence of carnal knowledge.
133	215 (7), 1140 (1) *(c)*	Corroboration no longer required in cases of a householder permitting defilement, cl. 156.
136	299	Death penalty for rape abolished.
138	301 (1)-(3)	Corroboration no longer required by virtue of the provisions of cl. 134.
139	298 (2)	The rule which applied to rape is extended to cases of carnal knowledge.
140	219	The section no longer covers women who are deaf and dumb.
145	213	Subsection (2) is dropped as being inconsistent withn "seduction".
149	206	Widened to include all acts of gross indecency irrespective of sex.
150	207	Widened to include phonograph records.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
157	215 (2)-(6)	Age of child raised from 16 to 18 to conform to Juvenile Delinquents Act. Covers conduct likely to endanger instead of an irrebuttable presumption arising from certain conduct. Illegitimate are in same position as legitimate.
159	205A	Provision requiring consent of Attorney General has been dropped.
160	100, 222B and 238 *(c)* *(e)* and *(g)*	Fighting has been included.
161	199, 200, 201	Widened to include obstructing a clergyman in the performance of any duty.
163	510A	"Alarm" has been added in para. *(a)*.
164	238 *(a)* *(d)* *(i)* *(j)* *(k)* 239	Para. *(b)* of sec. 238 is dropped. Para. *(b)* the provision for a certificate has been dropped. Para. *(d)* the words "in whole or in part "have been substituted for "the most part." Para. *(e)* widened to cover all the offences for which an offender may be found to be a criminal sexual psychopath.
168	225, 226, 227, 229 (3), 985 and 986 (2)	The definitions are drawn from the sections of the present Code mentioned in column 2. Subsec. (3) has been inserted to remove any doubt as to whether it was incumbent on the accused to bring himself within the exemption, that being a matter peculiarly within his knowledge.
171	641	It now limits seizure to things which may be evidence of the commission of any of the offences mentioned therein.
174	642	Sec. 5 of the Canada Evidence Act is made applicable to persons examined thereunder. Subsec. 3 of sec. 642 referring to opium joints is dropped as it is covered by the Opium and Narcotic Drug Act.
178	235 (2)-(6)	Subsec. (1) *(d)* (ii) changed by adding "six heat races of two heats each". This change was approved by the Minister of Agriculture.
180	234	Widened to cover all public conveyances. The power to arrest is no longer obligatory.
184	216, 1002 *(c)*, 1140 (1) *(c)*	Corroboration no longer required under subsec. (1) *(j)*.
186	241, 242 and 244	The present law makes a person "who is under a legal duty to provide necessaries" criminally responsible for failure to do so. The section as redrawn declares the duty which exists in law and effects no real change. Subsec. (3) *(d)* is new.
189	245	The age limit has been increased to ten years.
190	243, 249	This has been widened to cover all cases where a master has contracted to provide necessaries to a servant or apprentice.
198	254	This is widened to include cases in which death is caused by criminal negligence.
202	260	This has been changed by deleting the words "of its use" which appear at the end of para. *(d)* of the present section.
204, 205	262	The definition of infanticide is taken from the English Act. It fixes the age of a newly-born child at one year and includes cases in which the mind is disturbed from the effects of lactation.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
212	269	Widened to cover cases in which suicide does not follow.
216	273	The emphasis has been placed on the intent rather than on the means. The word "lawful" has been omitted in respect of an arrest as it was felt that discharging a firearm should not be condoned even though the arrest was unlawful.
217	277, 278	Para. *(b)* is changed by adding "aggrieves or annoys".
220	282	Widened to cover all common carriers.
221 (2)	285 (2)	Widened to include all vehicles.
225	285 (7) and (8)	Widened to cover cases of impaired driving.
227	286	Widened to cover all cases and not only those of shipwrecked persons.
228	287	One new offence has been created.
231	274, 291, 295	The offences of wounding and causing grievous bodily harm in sec. 274 have been merged with the offence of causing actual bodily harm.
232	275 *(b)*, 296	Assaults committed on election day have been dropped as covered otherwise.
266	912, 913, 947	The provision, sec. 912 (1), about notices is dropped.
267	956	The reference to criminal information is dropped. Subsec. (2) of sec. 956 is dropped.
269, 270	344–347, 864 *(e)*	We have included these for examination.
273	351	"Gas" has been added.
283	391	Changed so as to include a refusal after employment terminated.
284	392	Para. *(d)* dropped as it appeared unnecessary in view of the provisions of the Animal Contagious Diseases Act.
287	397	The words "capable of being stolen" have been dropped as these words have been dropped in the provisions defining theft.
292	455–461	The only change is to extend the provisions to vessels, aeroplanes and trailers.
293	462	The limitation of this offence to night is abolished.
294	340	Widened to include a temporary as well as a permanent opening.
299	398	Widened to include the offence of receiving.
300	402	Widened to include the offence of retaining.
301	993	Made applicable to all cases of receiving and retaining and not to cases of receiving stolen goods only. It also permits evidence of possession of goods obtained through the commission of any offence.
302	994	Made applicable to all cases of receiving and retaining.
314	475	Widened to include cablegrams and radio messages.
315	476	Widened to include messages sent by cable or radio.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
318	478	Changed in form. The reference to testamentary instruments has been replaced by a general provision covering any instrument issued under the authority of law.
320, 321	480–483 and 528	Widened to include all public registers. Paras. *(b)* and *(c)* of sec. 481 have been dropped because covered by cl. 287.
323	444	Intent to defraud has been made an element of the offence created by sub-sec. (2).
331	425	Changed by being put in general terms.
336	412 (2)	Widened to include admission. Subsec. (1) covered by forgery or the new cl. 397.
337	424	Subsec. (2) and subsec. (5) of sec. 424 have been dropped.
338	637	The powers of the justice have been widened.
339	424A	"Oil well" has been added.
340	413, 415, 418, 484, 485	Changed by being put in general terms.
341	415A *(b)*, *(c)*	Paras. *(a)*, *(d)* and *(e)* have been dropped.
342	416	Changed by being put in general terms.
344	412 (3)	Widened to cover contraband other than liquor.
350	487	Widened to include name or initials.
353	490	Mens rea has been made an element.
355 (2)	491, 635, 1039	This removes a conflict between these provisions.
356	492	The reference to a government department of the United Kingdom is deleted.
362	435	Identity card added in *(c)* and *(d)* at request of Department of National Defence.
365	499	A breach of any contract depriving a community of essential services has been made an offence. This restores the effect of the section as it read originally.
366	501, 502	Para. *(g)* of clause 366 added. There was duplication in secs. 501 and 502.
368	504	Subsec. (4) is dropped thus permitting a charge to be laid under either cl. 368 or 336.
369	505	Subsec. (4) dropped. Subsec. (3) dropped as unnecessary.
373	539, 740 (1)	The value of the property to which the section applies has been increased from $20.00 to $50.00. Subsec. (4) is taken from 740 (1).
377	515 (1) and (2)	Widened to cover all fires.
384	531, 532	International boundary has been added.
387	542	This section has been redrawn. Any changes that have been made appear in *(a)*, *(b)* and *(c)*.

Part X. Sections 391-405

This Part replaces the present Part IX (ss. 546-569) and the other sections noted opposite p. 132 of the Bill.

It is designed to afford a complete Code for the protection of the currency and to cover the defacing or debasing of the coinage and the making or possession of counterfeit money or of the instruments for making it, the uttering of it, and the seizure and forfeiture of counterfeit money, the instruments for making it, as well as the dealing or trafficking in it.

The old Part is almost wholly included in the new but by including in the definition of counterfeit money a good deal of the descriptive matter now set out in the sections, it has been possible to effect some condensation.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
		The following changes are to be noted: Paper money now partly covered by ss. 549 and 550, and otherwise by the forgery sections, are fully covered in Part X of the Bill. Counterfeiters nowadays are more apt to make counterfeit paper money than coins. It has been made clear that there is a right to *seize* counterfeit money. (Cl. 405 (2)). Knowledge is no longer an ingredient of the offences under cls. 393 and 395. (Cf. secs. 550 and 563 *(b) (c)*). It was felt that the words "without lawful justification or excuse" protect the person who unknowingly has possession of counterfeit money. The Bill is designed to cope with the methods of counterfeiters who do not give large amounts to "passers" at any one time. Clause 397 is new. The present sec. 549 (2) is dropped. This dealt with the issue of tokens otherwise than by public authority. It was felt that this was not likely to be a matter of such general importance that it should be included in the Code.
406	570, 571, 572 pt. 574 and 575	The only change is to make an attempt to commit a summary conviction offence or being an accessory after the fact to a summary conviction offence, an offence punishable on summary conviction instead of by indictment.
408	218	Corroboration is no longer required for this offence as it would be rarely, if ever, that the victim could testify to the agreement hence there did not appear to be any greater need to require corroboration for a conspiracy under this provision than under any other.
413	580 (1), 582 —nd 583	The following list shows the offences which will not be required to be tried by jury:

Offence	*Code No.*	*Bill No.*
Seditious offences	134	61
Libels on foreign sovereigns	135	62
Spreading false news	136	166
Judicial corruption	156	100 (1)
Corruption of officers enforcing criminal law	157	101
Frauds on government	158	102
Breach of trust by public officer	160	103
Municipal corruption	161	104
Selling offices	162	105
Rape	299	136
Attempted rape	300	137
Defamatory libel	317–334	250–251

Accessory after the fact to, an attempt to commit or a conspiracy to commit, any of the above offences, bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act.

Accessory after the fact to, an attempt to commit or conspiracy to commit, the following:

intimidating Parliament or a legislature,
acts intended to alarm His Majesty or cause him bodily harm,
inciting to mutiny, piracy or piratical acts.

Offences against secs. 130 and 131 relating to false oaths which were included in sec. 583 were dropped in the revision.

416	581	Widened by the inclusion of 412. In addition it has been reworded to bring it into harmony with the provisions of the Combines Investigation Act.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
418	580 (2)	This provision has been made general. In the present Code it applied only in the Province of Quebec.
419	584	Para. *(d)* relating to offences committed in aircraft is new. Para. *(e)* has been widened to include all offences committed in the course of a journey. It now applies only in respect of certain offences relating to the mail.
422	585	This provision has been made general, it now applies to Ontario only.
424	See secs. in Bill, p. 143.	The changes are as follows: (1) Reference to Quo Warranto has been dropped; (2) Sec. 576 (3) has been dropped as unnecessary because the Supreme Court Act of Ontario created a new court, the Supreme Court, to replace the Supreme Court of Judicature; (3) Secs. 1021 (15)-(17) requiring approval and tabling of rules made by a court of appeal are not continued as there was no similar provision relating to rules made under sec. 576.
427	644	A juvenile may be charged jointly with an adult. The provision that the trial must be without publicity will still apply.
429	629, 662,	Widened to include offences under all Acts of Parliament.
432	631	New provisions added. Provision is made for dealing with things seized under cl. 431.
433	633	This provision was enacted at a time when all forfeitures went to the Crown in right of Canada. In 1900 a change was made whereby certain forfeitures went to the provinces. As enforcement falls on the provinces it was felt that they should get the forfeitures.
434	646	Widened to include all indictable offences.
435	647, 648, 652 pt	Changed to bring it in line with cl. 434.
445	661	The seven mile limit for fresh pursuit has been abolished.
446	662 (4)-(6), 883, 941, 977	This section provides the procedure to secure the attendance of a prisoner who is required in any court to answer a charge or as a witness. Where the prisoner is outside the province the order must be made by a judge. Where the prisoner is within the province the order may be made by a magistrate. Subsecs. (5) and (6) deal with the passing of sentence where a prisoner undergoing sentence is tried.
447	662 (1)-(3)	The provision requiring proof of the signature of the issuing justice has been omitted.
450	796	This is practically all new. It requires a justice to remand cases to a magistrate where a magistrate has absolute jurisdiction. It provides for an election after the justice has decided to commit the accused for trial. This is designed to ascertain whether the accused wishes trial by jury or by a judge alone at the earliest opportunity. This provision has received the approval of the provincial authorities who attended the joint meeting in Toronto in September last.
451	673, 679, 680, 681	The main change is the clarification of the provisions relating to bail and the power to remand for mental examination a woman who has been charged with an offence arising out of the death of her newly-born child.
454	684 (2) and (3), 686	The only change is in the form of address to the accused.
460	687, 690	The provision relating to corporations is new and to cure an omission.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
461	692, 694	The provisions of these sections have been retained in respect of witnesses only.
463	697, 698, 700 and 702	These sections have been rewritten for simplification. Provision has been made for a cash deposit in lieu of sureties.
464	699	This provision has been reworded to reconcile a conflict in the decisions. In Manitoba it was held the section applied only after committal for trial. In British Columbia it was held to apply both before and after committal for trial.
485	5 (1) *(a)*	Reference to criminal informations has been dropped.
489	873 (5)-(7)	Northwest Territories and Yukon included in subclause (1). In subclause (2) Deputy Attorney General is included for all instead of only for Quebec.
490	962	Bill provides that recognizance is vacated when proceedings stayed.
498	865	Present section refers to body corporate. "Person", by interpretation includes corporation.
501	856 pt. 857, 858	The only change is that the proviso in 857 (2) respecting the trial at the same time of charges of theft, not exceeding three, is not carried into the Bill. The court is to hav full discretion.
503	849 (1) pt. 849 (2) 954	Widened so as to include (1)—property obtained by indictable offence other than theft; (2)—retaining property so obtained.
504	874, 875	The Bill is specific that witnesses examined before the grand jury must be sworn.
507	879 (1)	"or remain in attendance" added.
510 (1)	898 (1)	Demurrer omitted. Objection to be by motion to quash.
510 (2)	889 (1)	Changed in form.
510 (3)	889 (2)	The change is that the matters proposed in amendment must be disclosed by the evidence.
510 (4)	889 (2) (5)	Changed in form.
510 (5)	889 (4)	Changed in form.
510 (6)	889 (6)	Changed in form. As there are now no reserved cases, that reference is omitted.
510 (7)	889 (3), 890	Changed in form.
510 (8)	845 (3)	Unchanged.
510 (9)	847 (2)	Unchanged.
512	691, 894-896	Ten cents per folio (instead of five cents) to be paid for copies.
514	695 (3) (4)	Widened to include a magistrate.
516	905 (1), 906	Changed so that the issue of autrefois acquit or convict is to be decided by the judge and not by the jury.
519	909	Changed so as to include infanticide.
523, 524, 525	966, 967, 968	Changed so as to include a court acting under Part XVI.
529	918	The length of notice is changed from two to seven days.
539	926	Changed so that the judge, and not triers, decides the issue raised by a challenge to the array.
540	927	Changed only in subclause (3) *(b)* to conform to the change made in cl. 539.
541	927 (6), 933A	Changed to include Yukon and Northwest Territories.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
545	938 pt	Changed so as to drop joinder in challenges.
547	935	Para. *(e)* is new.
552	929	Changed to include Yukon and Northwest Territories. 'Jurors' instead of 'men' to cover cases where women may act as jurors.
553	929A	Changed to include Yukon and Northwest Territories.
556	945 (3)-(5), 946, 959	Under the Bill the jury is to be kept together unless the judge orders otherwise. Changed also to provide for cases where women may act as jurors.
558	944	Subsec. (5) is new. Subclause (4) would include a private prosecutor.
559	958	Mention of costs eliminated. The Bill provides that the judge and the accused must attend.
561	961	Proceedings on Sunday limited to taking a verdict.
565	984	Widened by being put in general terms.
569 (1)	951 (1) (2), 952	Changed so that the conviction may be for a summary conviction offence.
572	851, 963	Changed to provide that if the Crown seeks an increased peanlty it must show that notice of the intended application has been given to the accused before a plea is taken from him.
573	964	In the Bill, this section is wholly a matter of evidence in rebuttal. If increased penalty is sought there will have to be an application under cl. 572.
578	1010	Changed by being put in general terms.
579	1011	Changed by dropping references to special juries and proceedings in error.
581	1012	Definition of 'sentence' changed so that there may be an appeal where sentence is suspended. Definition of 'appellant' dropped as unnecessary.
584	1013 (2) (4) and (5)	Changed to make clear that acquittal includes acquittal of a principal offence although there has been conviction for an *included* offence.
586	1018	Subclause (4) is changed—(1) to cover fully cases where the Minister exercises his powers under cl. 596, instead of cases where he orders a new trial, and (2) to clarify procedure where proceedings in appeal make necessary a new time for execution of sentence of death or whipping. 1018 (5) is covered by cl. 624 of the Bill.
587	1019	Acting chief justice may designate judge to act on application for bail.
588	1020 (1)-(4)	Changed—(1) to specify that transcript of evidence and other material required for the appeal is to be furnished by appellant, and (2) by omitting the provision in 1020 (3) that the judge's certificate shall prevail.
589	1021 (1) and (8)	1021 (1) *(e)* omitted so that there may be cross-examination.
592	1014, 1016	The changes are—(1) Subclause (2) redrawn to accord with Welch *v.* R., 1950, S.C.R. 412. (2) Subclause (4) amplifies 1013 (5). (3) Subclause (5) altered so that there will be no new election where there has already been one, but new trial will be before another judge or magistrate unless otherwise ordered by Court of Appeal.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
595	1017	This is included for examination but it is submitted, involves only a change in form.
600	1024 (1) (2)	Subsection (3) and (4) of sec. 1024 omitted as being covered by recent amendment of the Supreme Court Act.
621 (1)	1028	This is not changed.
(2)	1029, 1054	The concluding clause has been added to resolve a conflict of judicial opinion.
(3)		This is inserted for clarity.
(4) *(a)*	746 (2), 1055	This does not involve change.
(b)		Para. *(b)* is new to cover a contingency not now provided for.
(c)	740, 1035 (4)	This is amplified to cover all contingencies.
622	1035 (1) (2)	Changed so as to make clear that there cannot be a fine in lieu of a mandatory minimum term of imprisonment.
623 (1) *(a)*	1035 (3)	This does not involve change.
(1) *(b)* and (2)		New. See also cl. 627.
624	1054B	The omission of 1054B (4) as to waiver of appeal will (by the operation of cl. 624 (1)) be for the benefit of the convicted person who has been sentenced to a penitentiary and puts him on the same footing as one sentenced to gaol.
625	1035A	Subsecs. (4) and (5) of s. 1035A are not included. It is thought that this can be regulated like other accounting.
626	1036, 1037	The only change is in dropping 1036 (2) (moieties). This accords with the repeal by 1950, c. 11, s. 18, of secs. 1041–1043 respecting moieties. See note to cl. 627 infra.
627	1038–1141	Penal actions will no longer be brought by private informers and there will be no moieties payable to them.
628	1048 (1)	The limit of $1,000 is dropped. Subsec. (2) of s. 1048 which provided for the entry of the order as a judgment is not included and the order will be effective as to money in the possession of accused when he was arrested. The order can be made by a magistrate under Part XVI.
629	1049	Clarified as to property obtained by crime other than theft.
630	1050, 795	Clarified as above. Reference to writ of restitution dropped as in modern practice this applies only to restoration of real property. Clarified to show that the property must be immediately available for restoration. There is authority for saying that this is the law now (Taschereau's Code, p. 903).
631, 632	1045, 1047	Although s. 1047 is listed as dropped, and sec. 1045 as new, they are in reality replaced by cls. 631 and 632. Provision for costs is retained only in respect of criminal libel. They are to be fixed by the court and not taxed under the tariff provided for civil actions. An order for costs may be entered as a judgment and enforced as in a civil action.
634	1006, 1056	Sub-cl. (1) comes from s. 46 of the Penitentiary Act. Sub-cl. (2) comes from the opening words of s. 1056. It will cover s. 1006 where there has been a change of venue. Sub-cl. (3) combines 1056 *(a)* and *(b)* with the added provision that if the penitentiary term is set aside, the other lesser terms will be served in a common gaol. As drawn it obviates the need for para. 1056 *(d)* which came into the Code, as to Manitoba, in 1901, and as to British Columbia in 1909. Sub-cl. (4) covers 1056 *(c)*, and sub-cl. (5) is para. *(e)* which came into the Code in 1949.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
635		This replaces s. 1057, but there will still be cases under other where hard labour may be orderred. Sub-cl. (2) covers a point which has arisen in practice. The cases are not uniform as to the right to file an amended conviction and warrant of commitment on *certiorari* or *habeas corpus*. See ss. 1124 and 1130.
637	748 (1), 1058, 1059	Changed as follows: (1) Recognizance may be for two years. Under 748 (1) it can be for one year. (2) Provision for one year's imprisonment in default of recognizance not included in view of provision for review after two weeks. (3) Review will be on application by accused rather than on notice by sheriff. (4) Stipendiary magistrate in Yukon included.
638	1081	Changed as follows: (1) The consent of Crown counsel required by 1081 (2) is not continued. (2) The recognizance limited to two years. (3) Sentence cannot be suspended when a minimum punishment is prescribed by law.
639	1083	Changed (1)—to provide for a summons on breach of recognizance instead of immediate warrant, and (2) to provide for cases where judge or magistrate by whom sentence was suspended dies or is unable to act.
641	1060	Some of the details as to execution of sentence of whipping have been omitted to be covered by regulations of the Governor in Council.
643	1063	Subsec. (3) of s. 1063 is changed as follows: (1) "stipendiary magistrate" omitted. (2) Provision is made for a case where it becomes necessary to appoint a new time for executing a sentence of death.
645	1065, 1066, 1067	The words "within the walls of the prison in which the offender is confined at the time of execution" in s. 1065 changed to "within the walls of a prison" to enable the establishment of a central place of execution as recommended by the Archambault Commission.
646	1068	Sub-cl. (2) is not mandatory upon the sheriff.
650	1071	Commisioner of Yukon Territory and of Northwest Territories added.
653	1075 (1)	1075 (2) as to tabling regulations, not continued.
654 (1)	1034 (1)	Changed by dropping the provision that pension payments cease.
		Provision as to pardon also omitted.
(2)	1034 (2)	"or of a legislature" added.
(3)	159, 162, 434 (3)	This combines several disabilities enacted in the Code. 434 (3) was re-enacted by 1951, c. 47, s. 17.
655	1076	The change from "the Crown" to "the Governor in Council" in sub-cl. (2) is really a change in form as it conforms to the instructions to the Governor General. Sub.-cl. (3) sets out the law as it is shown by authorities.
656	1077	This is redrawn to simplify the provisions (1077 (2)) as to notice of commutation.
659	575A, 1054A (8)	The Bill gives to magistrates acting under Part XVI the same power to deal with habitual offenders as they have now to deal with criminal sexual psychopaths. 'Preventive detention' is defined to simplify drafting.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
660	575B, 575C (1)	Changed as follows: (1) The indictment will not allege that accused is an habitual criminal. (2) If preventive detention is sought it must be applied for in accordance with cl. 662. (3) "On at least three separate and independent occasions" substituted for "at least three times previously." (4) "Five years or more" substituted for "at least five years".
661	1054A (1), (2), (3) and (5)	Changed as follows: (1) Widened to include gross indecency, buggery and bestiality and attempts to commit these offences. (2) One psychiatrist to be appointed by Attorney General instead of Minister of Justice.
662	575C (3) (4) 1054A (4)	Changed as follows: (1) The prosecutor is to give the notice. (2) The notice must be filed. (3) Where the trial is before judge and jury, the application for preventive detention will be decided by the judge alone.
663	575D	Widened to apply to persons alleged to be criminal sexual psychopaths.
664	575F, 575G (1), 1054A (5)	Changed as follows: (1) Redrawn to remove apparent conflict between 575F and 575G (1). (2) Power to commute to preventive detention will apply also to criminal sexual psychopaths.
665 (1)		New. Preventive detention will run at least 3 years. (See cl. 666).
(2)	575G (2) (3)	Changed in form only.
667	575E	Widened to allow an appeal by the Attorney General and also by a person sentenced as a criminal sexual psychopath.
681	1120	Changed to make clear that it applies before or after conviction. This is to resolve a conflict in the cases. It appears (Hansard 1892, Vol. II, col. 4448) to have been designed originally to permit defence evidence in extradition proceedings.
682	1121, 1122, 1129	There are conflicting decisions as to whether there is a right to certiorari after appeal is launched. Tremeear, 5th ed., p. 1518.
683	1124	This has been widened to include convictions or orders other than those made by justices. It has been amplified also to set out the power to correct sentences. (Tremeear, 5th ed., p. 946).
685	1126	Widened similarly to cl. 683. Sub-cl. (2) added for clarification.
687	1128	Widened similarly to clauses 683 and 685.
688	1130	Widened to include proceedings other than those under Part XVI.
692	706	Paras. *(b)* (ii) and *(c)* are derived from s. 706 (b).
	707	Para *(d)* is derived from s. 706. Para. *(f)* has in view the fact that cl. 581 *(d)* provides for appeal where sentence is suspended.
	708 (5)	Para. *(g)* is derived from s. 707 and s. 708 (5). Paras. *(a) (e) (f)* and *(h)* are new to conform to the provisions in the Bill that all summary conviction proceedings are to be commenced by information, and that an information may include more than one count.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
693 (1)	706	This is a change in form.
(2)	1142	The change is that under the present s. 1142 the limitation in the Northwest Territories and the Yukon is twelve months.
694 (1)	1052 (2)	This replaces 1052 (2) but goes further to provide a general penalty for summary conviction offences. It obviates the need for a great deal of repetition.
694 (2) and (3)		These are derived from s. 739, omitting the reference to distress, which has been dropped throughout. The imprisonment provided has been changed from 3 to 6 months to bring it into conformity with sub-cl. (1).
695, 696	708 (1), 710	Changed as follows: (1) Informations for offences as well as complaints will be commenced by an information on oath. (2) The information is not limited to one matter but may contain more than one count.
699	709, 732	This really drops s. 709, but the circumstances set out there are regarded as reasons for the exercise of the discretion under s. 732. (Brief pp. 148–150).
700	711 pt	This omits the reference to witnesses (dealt with in Part XIX of the Bill) also the reference to orders ex parte which is considered to be unnecessary.
701	723	This applies to summary conviction matters the provisions in Part XVII of the Bill which relate to particulars and to the sufficiency of indictments.
704	724	This adapts to summary conviction matters certain provisions as to amendment which appear in Part XVII (Cl. 510) of the Bill. The provision for motion to quash in cl. 704 (1) and the provisions of sub-clauses (2), (3) and (5) are therefore new in this relation, but are designed for uniformity. Present provisions of s. 724 (2), (3) and (4) that are peculiarly referable to summary convictions, are contained in cl. 704 (4) and (6).
705	707	Part of s. 707 (2) is in the definition of 'summary conviction court' in cl. 692 (g). As to the proviso, see cl. 419 (b). There is, however, a change in that counselling or procuring will be tried where the offence counselled or procured is committed.
708	721	Sub-cl. (4) is added in view of the provision that there may be more than one count in an information. Sub-cl. (5) adapts to these proceedings the provision contained in cl. 562 (s. 978). Subsec. 721 (4) as to character evidence is not continued. It appears to add nothing to the general rules. Sec. 12 of the Canada Evidence Act and the rules as to cross-examination will apply.
710 (1)	722 (1)	There is no change here.
(2)	722 (4)	There is a change in the additional provision for a deposit in lieu of surety.
(3)	718 and 722 (5)	This involves only a change in form.
(4)	722 (3)	This is unchanged. It is thought that a sufficient procedure is provided without continuing subsec. (2) of s. 722 in its present form.
712	721A	There is a material change in sub-cl. (1) in that application for an increased penalty is subject to notice to the accused that it will be asked for. Sub-cl. (2) of cl. 696 forbids reference in an information to a previous conviction. Sub-cl. (4) as to proof, adapts to these proceedings the provisions of cl. 574 (s. 982).

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
716 (1)	735 and 736	It has been held that the costs to be awarded are those set out in the tariff.
(2) and (3)	737	No change in effect.
(4)	738	Reference to distress omitted. Sub-cl. (5) embodies what is set out in the warrant of committal and authority to issue it.
717	748 (2)–(5)	The change is that the proceedings will be commenced by information on oath. Otherwise the procedure is set out in fuller detail.
719	749 (1)	Changed as to the Northwest Territories (cl. 719 (*g*)). See also cl. 721.
720	749 (1)	Changed to give an appeal against sentence and also to specify a right of appeal on the part of the Attorney General of Canada or of a province.
721	749	This embodies provisions as to British Columbia (s. 749 (1) (*d*)), Saskatchewan (s. 749 (1) (*f*)), Alberta (s. 749 (1) (*ff*)), Yukon and Northwest Territories (s. 749 (2)).
722	750 (*b*)	This modifies s. 750 (*b*) in several respects: (1) the notice of appeal is to set out the grounds of appeal; (2) there can be alternative service only where the respondent is a person engaged in enforcement of the law. It could apply, e.g., where a policeman respondent is transferred during the pendency of the appeal; (3) the notice is to be filed within seven days after service is completed.
724	750 (*e*)	Changed as follows: (1) An informant appellant (except the Attorney General of Canada or of a province) must give security. (2) The appeal court may permit the substitution of a new and better recognizance. This adapts the provisions of cl. 735 (4) (s. 762 (3)) as to stated cases.
726	757 (1)	Sub-cl. (1) makes clear that transmission is required only if there is an appeal. It appears that the practice where there is no appeal varies in the provinces. Sub-cl. (2) is new. There is some reason to think that a right to certiorari exists in the circumstances described but that might not be wide enough to cover all cases. Sub-cl. (3) is new in this Part and is designed to fill a gap. It adapts sub-cl. (2) of cl. 588 (s. 1020 (2)).
727	753 and 754 (1)	Sub-cl. (1) effects *a notable change* in doing away with a trial de novo on appeal. Sub-cl. (5) comes from s. 754 (1) and sub-cl. (6) (*a*) comes from s. 753. The rest of the clause adapts (for uniformity in view of the abolition of trial de novo) some of the procedure relating to other appeals (clauses 589 and 592).
729	755 (1) pt.	The provision in s. 760 as to six days' notice of abandonment is not included.
	760	This is a matter affecting costs which are, by cl. 730, in the discretion of the appeal Court.
730	754 (1) pt., 755 (1) pt., 760 pt.	This combines the provisions as to costs now appearing in the sections noted. This is essentially a change in form, although in s. 760 the word 'shall' is used.
731 (1)	758	The change is that the provision for distress in s. 759 (2) is omitted from cl. 731 (4). The Bill does not provide for distress.
(2)	751 (2)	
(3)	759 (1)	
(4)	759 (2), (3)	
732 (1)	754 (2), (3)	Provision for distress (s. 756) omitted from cl. 732 (2).
(2)	756	
(3)	757 (4)	

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
724 (1) (2)	761 (1) 761 (2), (3)	Justice's refusal to state a case is dealt with in cl. 738. Changed as follows: (1) Time for stating case reduced from 3 months to 1 month. (2) Time for filing and transmitting case increased from 3 days to 7 days. Sub-cl. (3) is derived from s. 763.
735 (1) (2) (3) (4) (5)	762 (1) 762 (2) 762 (3)	The only change is in the insertion of sub-cl. (3) which is new.
743	769A	The exception in cl. 743 (1) *(b)* limits the right of appeal to a case where the stated case did not go to the Court of Appeal as it may do in British Columbia, Saskatchewan, Alberta and Manitoba. It was felt that there should be provision for costs here as in preceding steps in summary conviction proceedings.
744	770	The items relating to distress are not included. "Reasonable costs of transportation" substituted for "reasonable livery charges".

PART XVI

Changes in Substance

Part XVI is a consolidation of the present Parts XVI and XVIII. This has made possible the elimination of a great deal of repetition as many provisions were common to both Parts.

This Part was submitted to and received the approval of the Provincial representatives present at a joint meeting with the Commission in September last.

The main changes under the Bill are as follows:

1. The jurisdiction conferred on magistrates is to be exercised by those specially appointed.

2. The asolute jurisdiction of magistrates has been increased in the following respects:
   (*a*) all offences of receiving and retaining are included where the value is $50.00 or less;
   (*b*) the value in respect of theft and false pretences is increased from $25.00 to $50.00;
   (*c*) attempted receiving, retaining and obtaining by false pretences are included;
   (*d*) offences under clause 179 (lotteries) are included.

3. The absolute jurisdiction of magistrates has been reduced in the following respects:
   (*a*) attempt to commit theft is limited to cases where the value is $50.00 or less;
   (*b*) the offences of indecent assault described in section 773(*d*) are eliminated;
   (*c*) the offence of being an inmate of a bawdy house is eliminated.

4. The jurisdiction with consent is increased (see note to clause 413).

5. The form of the election is changed.

6. The limitation of sentences in respect of offences over which magistrates have absolute jurisdiction is dropped. None of the offences over which magistrates have absolute jurisdiction is punishable with more than two years.

7. Charges may be joined in the one indictment with power to order separate trials.

8. The somewhat involved provisions of Part XVIII regarding election and re-election have been made uniform and have been simplified so as to provide that, with the consent of the Crown, there may be election or re-election within 14 days of the jury sittings but not otherwise.

The following table gives the source of the clauses of the Bill in so far as it is possible to do so:

Bill No.	*Code No.*	*Bill No.*	*Code No.*
466	823 *bafi*, 771	476	888 (5)
467	773	477	832
468 (1) and (2)	781 (1) and (2)	478	827 (3)
468 (3)	785		834
468 (4)	781 (4)	479	829
469	784	480	775, 825 (5)
470	782	481	831
471	New	482	781 (4),
472	825 (1)		790, 793,
473	824		794, 799,
474	New		827 (5)
475	828, 830	483	781 (5),
			838
		484	839

BILL—PART XIX

This is a compilation from the sections scattered through the present Code in respect of the attendance of witnesses. Nothing that is in the Code now is dropped and no new material is introduced except as follows:

1. A magistrate acting under Part XVI will have power to deal with a recalcitrant witness as for contempt. This was obviously a casus omissus from s. 788 as other courts (and even a justice by ss. 674(2) and 711(1)) have that power.

2. Cl.603(3) prevents the arbitrary issue of a warrant for a witness in the first instance.

3. As to cl. 608(1). A subpoena issued out of a superior court has effect outside the province. It is felt that a warrant so issued should also have that effect.

4. As to cl. 610(3). The note next preceding applies to this also.

5. A magistrate acting under Part XVI will have power (cl. 616) to appoint a commissioner to take the evidence of a witness who is out of Canada.

6. The provisions of s. 996, as to the attendance of the accused when evidence is taken before the commissioner, are varied (cl. 617). Such provisions, however, continue to be discretionary.

7. As to cl. 613(1)(ii). The provision for inability to attend for "some other good and sufficient cause", extends the present 995(1).

The following is an allocation of the clauses:

602. Special provision for the attendance of witnesses who are prisoners appears in cl. 446.

603. There will be a single form to be served on a witness. This clause provides how it is to be issued. Sub-cl. (2) is taken from ss. 673(1) and (2) and 973. It extends the discretion given to the justice by cl. 440, but provides that a warrant to arrest a witness who is evading service shall not be issued unless there has been an unsuccessful attempt to serve a subpoena.

604. This does not change the law as set out in Code sections 676, 711-713 and 974. Provisions for service appear in clauses 606 et seq.

605. Sub-cl. (1) comes from s. 671.
Sub-cl. (2) comes from s. 971.

606. Sub-cl. (1) comes from s. 672. See also s. 658 (4).
Sub-cls. (2) and (3) come from s. 676(2).

607. Sub-cl. (1) is derived from s. 974.
Sub-cl. (2) is derived from ss. 676 and 713.

608. (1) This is noted supra.
(2) The note to 607(2) applies to this also.

609. This is derived from s. 693. Detention is provided for in cl. 616. As to endorsement, the present s. 662(1) refers to 'any warrant'.

610. Sub-cls. (1) and (2) are derived from ss. 673(1), 842(1) and 972(1). The extension effected by sub-clause (3) is mentioned above (Notes 3 and 4).

611. This is derived from ss. 674(1) and 972(2).

612. This comes from ss. 674(2), 842(2), 842(3) and 972(3). The penalty is taken from 842(3) and 972(3). See also Note (1) supra.

613. This is derived from ss. 716(2), 995 and 997. See Note (7) supra.

614. This is derived from s. 995(1).

615. This is derived from s. 998.

616. This is derived from s. 997(1), (3) and (4). The extension in cl. 616(1) (*b*) is mentioned supra (Note 5).

617. This is a modification of s. 996. See Note (6) supra.

618. This is derived from s. 997(2).

619. This combines ss. 999 and 1000.

BILL—PART XXII

This is a complete redraft of the present Part XXII and is designed to provide a simple as well as a uniform procedure in respect of broken recognizances.

668. This refers to the Schedule which appears at p. 233 of the Bill. That Schedule embodies, as to each province, the court of courts, and the officials, designated by it.

669. This includes provisions now appearing in ss. 698(3) and 886(2) but is widened by being put in general terms. It will be noted that the provision for notice in s. 886(2) is not continued.

670. This comes from s. 1092 without change in effect.

671. This is a new provision. It sometimes happens that an accused who is at large on bail commits a new crime and is arrested therefor. It is thought that the subsequent arrest, which is an intervention by the Crown, should not operate to discharge his sureties.

672. (1), (2). Redraft of s. 1088 without change in effect.
(3), (4). Redraft of s. 1090 without change in effect.

673. This comes from s. 1091. No change in effect as cl. 675 provides for a new application.

674. This is s. 1093 without change. It preserves the common law right of render by surety.

675. Redraft of s. 1089 without change in effect.

676. This replaces ss. 1094, 1098 and 1099 and, as to Quebec, ss. 1113 and 1114.
As the Bill provides for a deposit in lieu of sureties, sub-cl. (4) is necessary.

677. This effects major changes.
(1) There will be an application to the court designated in the Schedule.
It will be on notice and will give the principal and sureties a right to be heard.
(2) The levy by execution has been separated from capias. The levy by execution is not new. It is provided for in ss. 1105 et seq., and, as to Quebec, in ss. 1115 et seq.

678. This is an adaptation of ss. 1107 and, with reference to Quebec, of s. 1116(1). It adopts the principle that the procedure to realize upon a forfeited recognizance is a civil matter. This accords with the law in Quebec and also with the judgment in Re Talbot's Bail. 1892, 23 O.R. 65, "these proceedings, being essentially for the purpose of collecting a debt, are civil in their nature, rather than criminal, and are regulated, except where there are special provisions, by provincial law". Tremeear, 5th ed., p. 1409.

679. This adapts ss. 1106 and 1117. There may be a committal by warrant if fieri facias cannot be satisfied, but a right is given to apply for relief by way of petition.